

SPECIALL
AND
SELECTED
LAWV-CASES,

CONCERNING
THE PERSONS AND ESTATES
of all men whatsoever.

*Collected and gathered out of the Reports,
and Year-Books of the COMMON-LAWV
of England.*



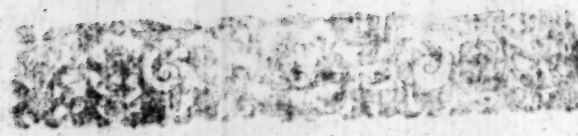
L O N D O N,
Printed by M. F. and are to be sold by William Cooke, at
his Shop at Furnivals-Inne Gate, in Holborn. 1641.

RECEIVED
AND
LAW-CASES

CONTAINING
THE PRINCIPLES AND PRACTICE
OF ALL THE COURTS

Rec. Dec. 14, 1898

Collected and arranged by the Editors
and Authors of the Common-Law
of England.



Printed by W. B. E. & Co. at the
New York Printing Office, 1841.



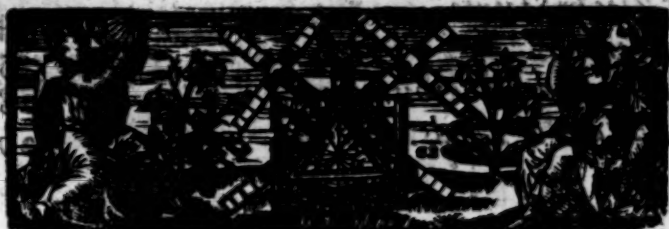
The Stationer to the Reader.

THis Copy comming to my hands after many perusals to my owne satisfaction, I desired it should receive allowance and confirmation from superiour Judgements; it hath beene presented to some of the learned Iudges, and Sir Richard Hutton, late Iudge of the Common Pleas, vouchsafed not onely to peruse it, but in divers places to correct and enlarge it, and now digested into a perfect body, I could not suffer it to sleep longer by me, but thus publish it for the benefit of

To the Reader.

*the Common-wealth, not doubting but
they which intenttely converse with
books of this nature will gratefully en-
tertaine it a poore addition to their
studies, from their bumble servant*

W.C.



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RENTS.

I Am seised of Land in the right of my wife, and I and my wife by Indenture do make a feoffment in fee of this land by sale and bargain, and the buyer of this Land, doth covenant to pay to me and my wife forty shillings annually, and to the longer liver of us: If after my decease my wife doth accept this Rent, yet this acceptance of this Rent is no Barre to her but she may recover the Land againe by a *Cui in vita*.

But if the sale had beene by deed of feoffment reserving Rent unto the husband and wife, with these words, Yeelding and paying this Rent unto the husband and wife, &c. If after the death of her husband she accepteth this Rent, she is barred and cannot recover this Land by a *Cui in vita* *contradicere non potuit*.

But if her Husband alone doth make a feoffment of the land of his wife, and reserveth Rent: And after the husband dieth and she accepteth the Rent, this acceptance doth not barre her, but she may recover the land by a *Cui in vita*: Because she was not party nor privy to the sale, *per Cur. Pas. 26 H. 8. f. 1.*

Diversitie inter
Rent and re-
centric.

A diversitie betweene a rent and reentry, for rent is parcell of the Reversion, and by grant of reversion the rent passeth.

But it is not so in a reentry, for the grantee in reversion can never enter for a condition broken *Mich. 27. H. 8. fo. 40.*

If my Father doth give me Rent in taile, Or if I be Tenant in taile of Rent by any other way, If I grant the Rent unto another in fee with warranty and dye, mine heire may distraine for this Rent if he will.

Wherein a man
ought to di-
straine, and not
to bring a Writ
of Formedon.

But if my sonne doth bring a *Formedon* for this Rent, he shall be barred by this garranty with asssets, because he unto whom this Rent was granted hath fee thereof by this Grant, *per Cur. Mich. 21. H. 7. fo. 40.*

Where Rent is
not extinct, but
in suspence.

If Tenant in taile of Rent disseise the Tenant of the Land, & maketh a feoffment with warranty, yet this is no discontinuance of this Rent, because the Garranty is made of the Land, and Rent not extinct but in suspence.

Every Rent
that passeth by
grant, cannot
be disconti-
nued.

And Rent common and every other thing which passeth by grant, cannot be in discontinuance, *Mich. 3. H. 7. fo. 12. Mich. 42. H. 7. f. 18. Hil. 21. H. 7. fol. 9. in Replegiare.*

A distresse is
not given to a
stranger by the
Law.

A Lease made reserving Rent unto a Stranger, This Rent reserved is void, because he cannot have this Rent, except he may enter and distraine for it: And a distresse is not to be given by Law to him that is a stranger to the Lease, and a Rent reserved upon a Lease for years and for not payment of Rent a Stranger may enter, this entrie is void. *Hil. 21. H. 7. fol. 11.*

If

If the King hath land by forfeiture which is holden of me, by &c. Or if I have a Rent charge issuing out of the same Lands, Or if the Tenant be indebted unto the King by Deed inrolled, so long as the same land is in the hands of the King, I have no remedie to recover this Rent but by petition.

Lands forfeited to the King pay no Rent Charge nor other Rent.

But if the King committeth the land over I may distraine the land of the Committee. *Hil. 21. H. 7. fol. 3.*

A Committee of the King may be distrained.

A Seigniorie and Tenure of Obit and Chantery Land is extinct by the possession which is in the King of the same lands by the Statute of 1. E. 6. Nevertheless, the saving of the same Statute; But the Rent remaineth distrainable, And the Lord shall avow upon the matter, and not upon the person as within his Fee and Seigniorie. *Trin. 14. Eliz.*

Possession of the King may alter an estate.

Dyer 313. Arrerages of Rent charge being due unto a widow, she marieth a husband which made acquittance of one feast after their Coverture, And therefore all the arrerages were lost, per *Dyer* Chiefe Justice & *Harper*, For by the Stat. of 11. H. 4. c. 24. it is a Positive Law that an Acquittance for the last day dischargeth the Arrerages of the Rent.

Arrerages of Rent lost by acquittance of a last day of payment.

But *Weston* and *Welch* Justices of a contrarie opinion, especially the Arrerages being when the woman was sole, 1. H. 5. per *Norton*. *Hil. 10. Eliz.*

Contrary opinion.

Dyer 271. If I have Rent charge issuing out of Land, and after I purchase the Land, the Rent is extinct, per *Cur. Mich. 4. H. 7. fo. 17.*

Rent extinct.

If a Rent charge be granted unto me, if it be behind unpaid,

Rent Charge unpaid, if I doe bring my Writ of Annuity although made Annuity I declare by *indeed*, yet *Rien arere* is a good Plea. by a Writ of Annuity. And by the using of the action this is Annuity and

no Rent Charge, for after if the Rent be behind unpaid, I cannot distraine for the Rent, And where an Action is founded upon matter in *false* and not by matter in writing, *Rien arere*, that is, nothing of the Rent is behinde unpaid, is a good Plea *per Cur.* Trin. 5. H. 7. fo. 34. Trin. 44. Edw. 3. fo. 15. Hill. 40. Ed. 3. fo. 5.

Rent that is in *esse* or in *demeasue* or being, cannot be granted to beginne after the death of another man. But if I grant a Rent charge out of my Land to beginne to be paid after the death of another man, This is a good grant *per Cur.* Trin. 8. H. 7. fol. 3. 4.

Executors or Administrators have action for arrearages of Rents.

If Rent Service, Rent Charge, and fee Farmes be due unto any man, holding Land in fee simple, fee-taile, or for life, if they die and the said Rents be not paid, their Executors or Administrators may have an Action of debt, for the Arrerages of the said Rents against the Tenants that should pay the said Rents, and against the Executors and Administrators of the same Tenants.

Executors may advow a distresse.

And also they may distraine for the same and for the arrearages, &c. and make advowry for the same as well as the Testator in the time of his life might have done, *per Stat.* 32. H. 8. 37.

The husband may distraine.

And the like remedie the husband shall have for Rents or arrearages of Rents due in the life of his wife. 32. H. 8. 37. and the Executors and Administrators of the husband. And the like remedie shall

shall the Executors and Administrators have for Rent, The estate whereof dependeth upon the life of another man being dead, *Statut. 23. H. 8. 37.*

Note that an Acceptance of Rent is to no purpose where the reversion is altered and determined and where the name of Succession is altered, as if Tenant in dower, Tenant for life, Tenant by the courtesie of England, and other such particular Tenants doe make Leases of their Lands reserving Rents and dieth. Acceptance of Rent where succession is altered is to no purpose.

And he in the remainder or reversion, accept this Rent reserved, the acceptance and receipt of this Rent is to no purpose, nor doth not affirme the Lease because the reversion is altered *Trin. 7. Eliz.* Acceptance to no purpose.

There are three manner of Rents, Rent service, Rent charge and Rent secke. Rent service is where the Tenant holdeth of the Lord by fealty and certaine rent, or by Homage, Fealty, and certaine, Rent, or by other service and certaine Rent, for the which Rent the Lord may distreine by Common right. Three manner of Rents.

And if Lands are given to a man in taile, that is, to the heires males or females of his body lawfully begotten, &c. Reserving Rent, this is Rent Service. Diversities of Rents Services.

And if a Lease be made, &c. for terme of life, or for terme of life of another man, or for terme of yeares rendring rent, a distresse is given by common right, if the Rent be behind unpaid, because the reversion is in the Leasor, Donor, or Grantor. A distresse liable of common right.

For if a man will make a feoffment in fee, or in taile, the remainder over in fee without Deed reserving Rent, This reservation of Rent is void, because Reservation void.

no reversion is in the Donor or Leasor, and he must hold of the Lord of whom the feoffor did hold, by Statute of Westminster, 3. cap. 1. *Quia emptores terrarum.*

Rent incident
onely to him
in Reversion.

For before the Statute, if a man had made an estate of Land in fee-simple by deed or without Deed rendring Rent to him and his heires, this was rent Service, for which he might distreine of common right, but now by the Statute reservation of such rent is void, because the reserver of this Rent hath no reservation of the Land, &c.

Rent Charge
is where there
is a reservation
of Rent in a
feoffment lia-
ble to a distress
for non pay-
ment.

Rent charge is where a man by his Deed indented makes a feoffment in fee, or gift in taile, or a Lease for terme of life, the remainder over in fee reserving a rent by the same Indentures to him and to his heires, a Rent, &c. That then it shall be lawfull for him and his heires to enter and distraine, &c. This is called a rent Charge because that such lands are charged with such a distress, onely by the Indentures and not of common right. For if such a man by Deed indented reserve unto himselfe, and his heires certaine Rent without any such clause in the Indenture, That it shall be lawfull, &c. to distraine; Then this rent reserved is called a rent Seck, that is, a drie Rent, for the which a man cannot distraine, and being never seised thereof he can never have the same, But being once seised of the same, if after it be denied, yet is the said Rent to be recovered in assize, but not by distress, because distress is not incident to it.

If there be sei-
sin of rent,
then it may be
recovered in
Assize.

If a man seised of land doth grant by Deed poll, or by Indenture an Annuaill Rent issuing out
of

of the same land to me in fee, or fee-taile, or for life, &c. with a clause of distresse, this is a Rent Charge, And if it is without a clause of distresse, then it is a rent Seck.

And for a rent Charge, if the Rent or arrerages of the same is behind and not paid, I may choose to sue a Writ of Annuity against the Grantor, or distraine for the rent behinde: But I cannot have both together, For if I receive by a Writ of Annuity, then is the land ever after dischargd from a distresse: But if I distraine for this Rent, &c. And the Tenant sueth a Replegiare; And I advow the taking of the distresse in the Land in a Court of Record, then after the Land shall be charged therewith.

If arrerages of Rent Charge be unpaid, it may be recovered by a Writ of Annuity or distresse.

A Writ of Annuity dischargeth the Land.

If I have a Rent Charge to me and to my heires for ever issuing out of land, If I purchase any parcell of this land to me and to my heires, all the rent Charge is extinct, And the Annuity also; Because that a rent Charge in this manner cannot be apportioned.

Distresse dischargeth the body.

Rent Charge is extinct by purchasing of the land where the Rent is issuing.

But if a man which hath rent Service purchase parcell of the land from which the rent is issuing, This doth not extinct all the rent, but for all the parcell, for Rent Service in this case may be apportioned according to the value of the Land.

Rent Service not extinct but in part.

But if the land be holden of the Lord to render unto him yearly at such a Feast, a Horse, a Hauke, a Gray-hound, or a cloven Gilly-flower, and such like, If the Lord purchase parcell of this land, the service is cleane gone and extinct, because that such service cannot be severed nor apportioned.

In case where it is quite extinct.

Rent Charge
apportioned
where it com-
meth by de-
scend, and not
by purchase.

If I have a Rent Charge, and my Father doth purchase parcell of the Lands, or Tenements, charged with this Rent, and he dieth and the Land descendeth to me his Son, which hath his Rent Charge, This Rent Charge shall bee apportioned according to the value of the Land, as it is of Rent Service, because this Portion of Land purchased by any Father, doth not come to me by my owne Act, but by descent by course of Law.

Distresse inci-
dent to Ho-
mage, Fealty,
and Escuage.

He which hath Homage, Fealtie and Escuage of his Tenant may of Common right distraine for them if they be behind unpaid, for they are Services by which Lands, &c. are holden, But otherwise it is of Rent which was once Rent Service, for when it is once severed by the grant of the Lord from the services, because it hath not Fealtie, which is incident to every manner of Rent Service: But Rent Seck which cannot bee distrained for, nor yet to bee recovered except he hath once seisen thereof, which after being denied it may by recovered by an Affize.

Vpon a gift in
Taile or for
life upon re-
servation of
Rent, if the
Reversion be
afterward
granted and
the Tenant at-
tourne, the rent
also passeth.

And if a man doth give Land in Taile or make a Lease for terme of life, rendring unto him and to his heires certaine Rent, if he granteth the reversion of the Land to another, & the tenant doth attourne Tenant unto the Grantee, All the Rent and Service doth passe by this word Reversion, because such Rent, and Service in such case are incident unto a Reversion, and passeth by grant of Reversion.

Rent reserved
granted unto

But if he granteth this Rent reserved unto another by Deed, saving the Reversion of the Land to himselfe being so letten, &c. Such Rent is but
Rent

Rent Seck, &c. Because he unto whom this rent is granted, hath nothing in the Reversion of the Land, For although he granteth the rent unto another yet the Reversion of the land doth not passe by such grant. another saving the Reversion, is Rent Seck.

And if the tenant holdeth certaine land by fealty and certaine Rent, and the Lord granteth this Rent by Deed unto another, reserving unto himselfe Fealtie, and the tenant doth attorne unto the grantee of this Rent; This is but Seck unto him, &c. because the Land, &c. is not holden of him unto whom the Rent is given: But of the Lord which reserveth the Fealtie. Lands holden by Fealty and certaine Rent, the Lord granteth the Rent by Deed to another, and the Tenant attourneth, reserving the Fealty, this is Rent Seck to the Grantee, being still held by the Fealty of the Lord.

Lord, Meane and tenant are, and the tenant holdeth of the meane by the service of 5.s. and the meane holdeth over by service of 12.d.

If the Lord Paramount doe purchase the Tenantry, that is, the land of the tenant in Fee, then the service of the meane is extinct, because that when the Lord Paramount next above, if he hold of him, which was the Meane, Then he should hold one Tenancy immediately of divers Lords which were against reason; And therefore the Seigniorie of the Mesuallty is extinct, but because the Tenant holdeth of the Meane by 5.s. and the Meane holdeth but by 12.d. So that the more in advantage by 4.s. then he paieth unto the Lord, he shall have this 4. s. as a Rent Seck yearly of his Lord which purchased the Tenancy.

If there be Lord and Tenant, and the Lord granteth the Rent of his Tenant unto another by Deed, saving unto himself his services, this is a rent Seck, Which is a Rent Seck.

Seisin gaineth
benefit of
action.

Wherein seisin
is needfull.

Having seisin
of Rent Secke
and after de-
niall is disseisin
and the dissei-
see may bring
assise.

The reason
of *cessavit vi-*
centium.

Secke, and if the Rent be denied him at the next day of payment, he is without remedy for it, because he hath no possession: But if the tenant doth Attourne Tenant unto him unto whom this Rent is granted by the delivery of one penny or halfe-penny in name of the seisin of this Rent, Then if the rent be demanded at the first day of payment thereof, and denied, he shall recover the same by assise of *Novell disseisin*.

And the like Seisin the Law requireth unto him that hath Annuity granted, or any Annuall Rent issuing out of Land of another man, or otherwise he loseth it.

And if a man be once seised of a Rent Secke, or of any parcell thereof, or of any Annuity; If the Tenant will not pay the Rent behinde, he must, or some of his friends goe to the Lands or Tenements where the Rent should be paid, and demand the same and the Arrerages thereof, And if the tenant refuse, or deny the payment, &c. This deniall is a disseisin of the Rent, and if the Tenant be not upon the Land when this demand is, this is a deniall which is a disseisin: And the disseisee may have an Assise of *Novell disseisin* against the Tenant, and recover the Rent and the arrerages thereof and his Costs and Damages; And if the land is inclosed that he cannot come and demand, &c. This is a disseisin.

And if the Tenant doe not pay this Rent, nor maketh his suite and services to Court as hee ought to doe, and hath no sufficient goods, or chattells on the land that may be distrained for this

Rent

Rent, and service so behind, But doth suffer the Land to lie fresh and not occupied the space of two years together, then the Lord may have a Writ called *cessavit biennium*, and recover the Land if the Tenants will not finde sureties to pay the Rent.

A Rent Charge is granted by me to *H. H.* by fine, To have and to hold to him during the life of *A.* my Wife : And that if the said Rent were behind and unpaid, &c. That it should bee lawfull for *H. H.* and his heires during the life of *A.* my wife to distraine, &c.

H. H. deviseth this Rent by his last Will and Testament, and dieth.

The opinion of *Dyer* Lord Chiefe Justice of the Common Pleas was that the devised should have this rent, for this clause of distresse maketh that *H. H.* had fee in this rent during the life of *A.* determinable upon her life; But some were of opinion that I being of this Rent the Grantor, shall retaine this rent as an occupant. *Quintons case 26. lib. Assisar. & Collingbrookes case 8. H. 4. Dyer 2. 53.*

If a man grant a Rent Charge, &c. *Pro consilio impedendo*, this Rent cannot be forfeited nor granted over because it is incident to the cause.

If I grant a Rent Charge unto another man and his heires, and not naming my heires, yet this my grant is good for ever, because the Land being in the hands of my heire, shall be charged with the payment of this Rent, although my heire is not named in the grant, for the land is charged herewith in whose hands it cometh unto, *Hill. 21. H. 7. per Frawick Justic.*

But

But if I binde me and my executors in an Obligation, and doe not name my heires in the Bond, my heire shall not be charged upon an action of debt brought upon this Obligation, although he hath land from me by fee in descent.

And if a man doth grant me an Annuity & to my heires, if my heires which doth grant me this Annuity is not named in the grant, although he hath lands by descent, he shall not be charged with this Annuity. *Hill. 21. H. 7.*

Formedon of a Rent Charge of two Acres of Land joynt-tenancy of one Acre abateth all the Rent.

For the Rent Charge must be demanded against all the Tenants of Land.

But the Rent Service may be demanded against the Pernor of the profits. *Pas. 2. 8. H. 8. fo. 37.*

Vnity of possession extinguishteth Rent.

If I purchase Lands in which I have a rent, the rent is extinct by the vnity of the possession, for a man cannot have Rent of himselfe. *Trin. 11. H. 7. fo. 25.*

If a man seised of land in fee, bindeth himselfe in Statute Merchant, and after granteth a Rent Charge out of his land unto another; And after the Recognisance, sueth execution, he shall possesse the land discharged, *per Car. Trin. 14. Ed. 3.*

If rent is granted for terme of life, and that he and his heires may distraine: This rent is a Fee-simple, *8. H. 4. fo. 19. titulo de graunts fo. 37. Brooke.*

But if a man letteth Land for terme of life, rendering rent, he hath no Fee-simple in the rent; But otherwise it is where Land is given in Taile rendering

dring Rent, 7.H.6. fo.3. *Gascoins case.*

If a man doth grant a rent to me, not expressing what estate I shall have therein, This Rent continueth in me but during the life of the Grantor, but otherwise it is, if there is an estate expressed to me as for twenty yeares, or, &c. *quod nota, 7.lib. Aff. P.8.*

If Tenant in taile doth grant rent in fee, This is fee-simple determinable upon the life of the grantor. 14.H.8. fo.27.

Dower Women.

IF a man being sole seised of Land in fee-simple, fee-taile, or of such an estate, that the issue betwixt him and his wife may inherit, If the husband doe sell away the same Land, or die seised thereof, or is disseised thereof, his wife shall have the Writ of Dower against the Tenant of the freehold thereof or against the Gardian in Chivalrie.

And of Rents, Advowsons, Commons of Pasture, of a Mill, keepership of a Parke, and of all other profits whereof her husband had an estate of freehold of inheritance.

And of Rents if it doth descend her husband doe die before the day of payment thereof, P.1. H.7. fol.18.

A man seised of land, hath issue a sonne who is married in the life of his Father, the Father dieth seised, and after the Sonne dieth before he doth enter

enter into his Fathers land, yet the Sonnes wife shall be endowed, because her husband had a possession in Law.

But a man shall not be Tenant by the curtesie of England, except his wife hath an actuall possession of her land, except it be of an Advowson or of rent due unto the husband who dieth before the day of payment of the rent due unto him.

A man assigning Dower unto his wife by Deed *Habend'* for terme of her life rendring rent, This *Habend'* is void, and the rendring of rent also, For she is in right by her husband, *Mich. 5. Marie.*

A man being married and hath right to enter into lands and dieth; The negligence of not entring into his land by the husband wherein he had right to enter, shall not barre the wife of her dower.

But where the husband cannot enter but is put to his action and suite of Law to recover this land and doth not sue for the same in time of his life, *P. 1. H. 7. fo. 18.*

The wife after the decease of her husband may remaine in the Capitall Messuage wherein he died forty dayes after the decease of her husband; *per Stat. de Magna Carta, cap. 7.* And if the heire will not suffer her, she shall compell him by a Writ *Quarentina habenda*: But whether she may maintaine her possession by force therein it is doubtfull; And she must shew the death of her husband certaine and the time of forty dayes, *Mich. 5. or 6. Ed. 6. Dyer 76.*

The Lady *Powis* departed from her husband with an adulterer, and after she and her husband did againe lye together.

This

This was such a reconcilment in Law betweene them, that although they did not after dwell together, she should be endowed of the lands of her husband; So that she did not goe away with another man, *Mich. 2. Marie.*

A woman running away with an adulterer from her husband, and remaineth with the adulterer, she loseth her dower: But if she remaineth with the adulterer in the Manor or Lands, &c. of her husband; then neverthelesse she shall be endowed, for this is no elopement or running away: But if a woman be ravished against her will, and is carried away forty miles from her husband, if her husband dieth she shall be endowed. *43. Ed. 3. 9.*

An estate made unto the husband for life, the remainder to another for life, the remainder unto the husband in fee, if the husband doe die the wife shall not be endowed; except her husband had survived him in the remainder for life. *46. Ed. 3. fo. 16.*

Where a woman is endowed of land which her husband did take in exchange, she shall not be endowed of the land which her husband did exchange. *31. Ed. 2. fo. 17.*

A man seised of land in fee, doth make an estate for life, and after marrieth a wife and dieth, his wife shall not be endowed; but if the husband survive the tenant for life, and after dieth, she shall be endowed. *2. H. 4. fo. 27. 1. E. 6. fo. 88. 7. H. 6. fo. 9.*

Lands given to the husband, and to the heires which he hath begotten of *Margaret* his wife, she being dead at the time of the gift, the second wife shall not be endowed of this land. *12. H. 4. fo. 2.*

If

If lands be given unto the husband and the wife, and to the heires of their two bodies lawfully begotten, If the wife dieth, the second wife shall not be endowed of this land, 22. *Edw. 3. fo. 9. Littleton fol. 14.*

I make a Lease for yeares, the remainder unto the right heires of *Atkinson* for ever, And after *Atkinson* taketh a wife, and dieth during the terme of yeares, his wife shall recover her dower, but she shall not have execution thereof during the terme of yeares, 1. *Ed. 6.*

A gift of land in taile, is with a Reservation of Rent unto the Donor and his heires; The Donor marrieth and dieth, and the Tenant in Taile dieth without issue, this Rent is extinct, and therefore the wife shall not bee endowed thereof, because this Rent was reserved upon an estate tailed determined, but the wife of the Tenant in Taile shall bee endowed of the land, because the land continueth and is not determined as the Rent is.

If a woman hath a Lease of lands for yeares by Indenture if she hath right to be endowed thereof, yet she shall not be endowed hereof; But if she after do marry her land-lord, and he dieth, she shall be endowed, neverthelesse the Lease to her made, 6. *H. 4. fol. 7.*

A woman intituled to have dower, and doth enter upon the heire and after doe reinfeoffe the heire, she hath lost her dower as by confirmation by force of the Deed; But without Deed the Law is otherwise, for then her right of dower remaineth, because she is remitted and nothing by the Livery, *per Cur. Pas. 11. H. 7. fq. 2.*

Here-

Horewood and his Wife were joynt purchasers of land worth 60.l. a yeare, and he was seised of more land worth 300.l. a yeare, and devised by his Will that his wife should have the third part of all the land with her Joynture, by the assignement of his Executors, and dieth, his wife refuseth the Joynture, and demandeth the third part of the whole, that is, 120.l. a year as a Legacy, and the part of the rest of the land, that is to say, 80.l. a yeare; and it was decreed *per Cur.* that shee should have the third part of the whole, and over and besides 40.l. for the residue of the land yearly for her Dower. *Trinit. 36.H.8.*

If the husband doth hold lands joyntly with an other man and no partition thereof made, and dieth, his wife shall not be endowed of this land, because her husband died not seised thereof. *Littleton fo.9.*

If the Lord of a Mannor recover against his Tenant in a *Cessavit*, and if the land doe escheate unto the Lord for lack of an heire, or if the Lord enter by reason of Mortmain, the woman shall be endowed.

A Tenant of the King holding lands in *Capite*, dyeth seised, and his heire dieth before he doth enter, his wife shall be endowed.

But if the heire doth enter and intrudeth upon the possession of the King, and dieth before hee hath sued his liverie, his wife shall lose her Dower:

Quia nullum accessit ei liberum tenementum priusquam Domino Regi fecit fidelitatem, per statut. prerogativa Regis, cap. 12.

Bargaines and Contracts.

Goods sold,
warranted not
at sale, is void.

A Man selleth goods or wares, and after sale he doth warrant them, this warrantie made at any other time then at the time of the sale is void. *5. H. 7. 41.*

Goods sold,
warranted, if
they prove not
good, action of
deceit.

If a Seller of goods or wares doth warrant the things sold and they prove not good, the buyer may have an Action of Deceit, although he hath not paid the money, for the Seller may have his Action of Debt. *9. H. 7. fo. 22.*

It is no bar-
gaine but a co-
munication,
except there be
present *Quid
pro quo.*

If a man demand the price of a yard of cloth in London of a Draper there, &c. and he saith 20.s. and the partie saith that he will give so for it, and doth take the cloth; it is in the election of the Draper to make it a bargain or not, for it is but a communication, and no perfect bargain except there be *Quid pro quo*, money presently paid for the same, and the Draper may choose to detain it untill he be paid, or to have his action of Debt for the money, for if hee will take the cloth not paying the money for the same, against the will of the Draper, he may retaine it, or otherwise have his action of trespassse against him. *21. H. 7. fo. 6. per Finem.*

No bargain,
but a Commu-
nication with-
out present
money.

If you will say you will give me 20.li. for my Gelding, if you doe not pay to me presently, this is no bargain but a communication, but if you be numbring your money to pay me, I cannot sell my Gelding to another in the meane time; but if he doe not presently pay it, but saith that he will
in

in one houre pay me, this is no bargaine but a communication, because he did not pay me presently, for in the meane time I may sell the Gelding to another; but if I doe sell my Gelding for 20.l. and a penny in earnest is given me, this is a perfect bargaine, and you must have the Gelding, and I must recover my money by any action of Debt. 15.H.7.*fo. 6.*

An earnest penny given.

If a man will assume and take upon him by word to make me a house without consideration, I cannot have an action against him if I doe it not; And Contracts, and Concords are good being conditionall after conditions be performed, but before they are but Communications, *Plowden Com. fo. 309. & fo. 11.*

Bargaine or assumpsit without consideration void.

Contracts upon Conditions good after they are performed.

I bargaine and sell unto a man my Gelding for 16.l. and do warrant the same to defend &c. and I doe deliver the Gelding unto him, although he hath not paid me for my Gelding, if he be deceived, he may have an action of Deceit against me, because that I may have an action of debt against him for my money, *per Cur. Hilar. 9.H.7. fo. 27.*

A warranty of a Gelding to be found is not an action of deceit.

I sell the Horse or Gelding of another man which I have gotten by money for 5.l. and not in open market, and the owner doth take the Gelding as he may, in whose custodie the same is, yet this wrongfull seller of the Gelding may have an action of Debt for this 5. l. because the Contract was once executed.

A sale of any thing in open market.

And if a man doe sell Trees growing on the lands which he holdeth in the right of his wife for 40.l. and the buyer selleth and taketh away

A contract once executed is intire.

and doth pay 10.l. and after the wife dieth without issue, so that the husband is cleane dismissed of the land, and is not tenant by the Curtesie of England, yet the husband shall have an Action of Debt for the 30.l. remayning for the price of these trees, because the Contract was intire, and yet the buyer of these trees shall never have the rest of these trees. 18. *Ed.4.fo.6.*

A thing sold,
retayned untill
payment.

And if a man doe sell a Gelding for 20.l. He may retaine the Gelding if he wil untill he be paid his money. *per Brian Iustice.*

A Lease and
cloth sold, the
contract can-
not be severed
but intire.

If a man is possessed of a Lease for terme of yeares, and will sell his Lease of his land, and certaine Cloth for 20.l. the contract is intire and cannot be severed; and if any of this be divested from the buyer, yet neverthelesse the seller shall have the whole summe of 20.l. for the Contract is intire and cannot be severed. 7.H.7.*fo.5.* 12.H.8.*fo.13.* 9.*Ed.4.fo.1.*

Contract can-
not be appor-
tioned.

And Contract cannot be apportioned, for if a man doth retaine a servant for a yeare for 10.l. to be paid at two Feasts, and the Master dyeth after the first Feast, the servant shall have the wages but for the first, but if he were retained for 10.l. to serve for a yeare, and he doth depart within the yeare, hee shall have no wages, for a Contract cannot bee apportioned. 27. *Ed.3. in apporportionment.*

Payment, Exe-
cutors not na-
med.

I bargain and sell my Land unto *Atkinson, &c.* Provided that if I pay to *Atkinson*, his heires, or assignes, 20.l. before Christmas next, this bargain to be void, *Atkinson* dyeth before the day,
and

and I doe pay the 20.l. unto the Executors of Atkinson.

There is a doubt whether this payment by me is good, or not contrary to the expresse words, for this word Executor is not named, And this word Assignee will not help, for although an Executor bee an assignee in Law, yet he is not an assignee in the Land, *Dyer 180. 2. Eliz.*

Executor is assignee in Law, but not in Land.

A contract is intire, and therefore being destroyed in part it is not good. And if I let a Chamber, and board a man and his wife and his sonne, paying for every weeke 11. s. If I doe bring my action of debt for this money, it is a good Plea for them to say, that I did not let the Chamber, for the contract being destrained in part is lost. *9. Ed. 4. fo. 1.*

A contract intire and destroyed in part is void.

If a man doth bargain and sell me wood, and that I must give him for the same, 10. l. if I doe like it upon the sight thereof, this is a good bargain of my will and pleasure, for if I first will upon the sight of the wood, it is a perfect bargain although after I doe disagree thereto. *18. Ed. 2. fo. 16.*

A bargain on good liking.

A man seised of Land selleth the Trees, and after maketh the feoffment in fee of the land unto another before the felling of the same trees, the buyer of the trees shall have them, *20. H. 6. fo. 23.*

A sale of trees, the seller sells the Lands after, but the trees belong to the buyer of the land.

If a man doth bargain and sell me twenty Acres of Corne, and that I must give him for every acre, 20. s. if I doe like it upon the sight and view thereof, I doe like it and thereupon take it and carry it away, he may have an action of trespass.

A bargain upon good liking of Corne.

Payment before it is carried.

pass against me, although the bargain was that I should have the Corne upon my sight and pleasure, paying for every acre 20.s. for I cannot take away the Corne before I have paid, for the payment is part of the Contract.

Payment is parcell of the Contract.

And the Law is if a man agree for the price of Wares, he cannot take them before he hath paid for them, except he hath day of payment given unto him. 17. Ed. 4. fo. 1.

Payment is parcell of the Contract.

Agreed *per Cur.* That a contract is not good without present payment, except there be day given, *vide pag. hujus libri, en dettme of goods.*

A contract ended in part, is ended in all.

Action of Debt was brought upon a contract for 20*l.* The Defendant said that the Plaintiffe after this Contract did take an obligation of 10*l.* of him parcell of this 20*l.* A good plea adjudged to destroy the whole Contract, for a Contract determined in parcell is determined in all, for it is an intirething, 4. H. 4. fo. 20.

Contract or Bargaine void by Obligation.

If a man be indebted to me by a Bargain or Contract, and after is bound to me by an Obligation for payment of the same debt, the Contract thereby is determined, for in an action of debt brought upon the Contract it is a good plea, the Obligation was made for the same debt.

A Contract and another bound to person.

But if an other man is bound to me in an Obligation to pay unto me the due unto me by this Contract, yet the Contract remaineth, because it is made by another person, and now both of them are debtors unto me. 19. H. 8. *titulo* 29. 21. H. 7. fol. 5.

A Contract or Bargaine of Tithes.

A Parson of a Church, or any other having Tithes

Tithes may make a contract, or sell his tithes within his Parish for seven yeares to come, or the profits of his Courts for seven yeares to come, and adjudged good, yet hee hath not the thing at the time of the sale.

And if a Parson of a Church doth sell his Tithes Lambs at Christmas in his parish, this sale is good; Or if Tenant for life doe sell the profits of his land for two yeares, this is good, for the sale is a grant of it selfe, *Hil. 21. H. 6. fo. 43.*

A man may contract and grant to another that he shall not be impeached of Waste, and dispense with a thing which is not in *Esse*, because a grant is a Covenant: But a release of Waste that is to come is not good, *42. Ed. 3. fo. 24.*

If A. maketh a Lease bearing date the first day of January, to begin at Michaelmas next following: This Lessee may grant or sell this terme before Michaelmas next, But he cannot release or surrender the Lease. *22. E. 4. titulo Grants. 110.*

If a man granteth a Ward or Wardship, &c. And so from heire to heire untill one of them come to full age, this is not good, for a Ward that shall fall after, but such a Grant made by the King is good. *24. Ed. 3. in Grants 47. Abridg.*

Tithes sold by a Parson, profits of land sold by Tenant for life.

A contract or graunt, not to be impeached of waste. Release of waste to come not good.

A sale of a Lease good before entrie, but a release not good.

A graunt not good for that which doth fall after.

C 4

Waste

yeares may fell and it is no waste. But *Martin Justice* said the Law is not so, but in such a Countre where plenty of Wood is; And if Oakes doe passe the age of twenty years, they cannot be felled as seasonable for house-bote, but boughs and wrangland which are felled downe, being of the age of twenty yeares and not being Timber is no waste. 7.H.6.fo.1.

If tenant for terme of yeares doe fell young Oakes of the age of seven or eight yeares, it is no waste. 13.H.7.fo.21. per *Brian Justice*, but being felled at the age of ten yeares it is waste, for they may prove Timber. 4.Ed.6.136.

If Oakes be felled and after the spring is destroyed with Cattell with feeding and biting, the same is waste; because it will be no Timber, but Shrubs after such biting. 11.H.6.fo.19. 13.Elix.25.

To fell Oakes and to sell them is Waste; but the Tenant for years, &c. may sell Timber to doe reparations upon the same Land which hee holdeth for yeares; but not to repaire other land: And to fell Oakes of the age of ten yeares seasonable for house-bote is no Waste, but if they be of the age of twenty yeares, and like to make great Timber is Waste. 7.H.6.fo.40.

A Lease is made, &c. Except and reserved woods; and underwoods; if the tenant for yeares doe fell Timber, &c. An action of Waste is not liable against the tenant for yeares, for the Statute is *de terris, boscis, & gardinis, sibi demissis*, of lands, woods, and gardens, demised unto the tenant,
and

and by the exception and reservation of the woods, &c. they are not demised, yet the Tenants shall have the herbage of the woods.

But if a man doe grant his woods, &c. the Lands wherein the woods doe grow doe passe with the woods, for the deed of every man shalbe taken, and construed most strong against himself, and in a Writ of Entric, if the demand is of twenty Acres of wood, the Land shall also bee recovered.

To break a mud Wall, or stone Wall, being without the house, or within the house, is waste, for they are parcell of the free hold, and may endure during the life of man, *per Cur.* And if the Tenant for years, doe pull downe the partition of severall Chambers, and maketh an union of them, it is waste, *per Cur. Mich. 10. H. 7. fo. 2. &c.*

A Wood of Hasells, and Willows is waste, as well as Oakes, but to cut downe Hasells, and Willows growing in any wood amongst Brakes is no waste, because they are but under-woods, *per Cur. Mich. 10. H. 7. fo. 2. & 5.*

To fell Apple Trees and Hasells upon the Land growing in severall places as where 2, 3. or 4. &c. doe grow together in one place, and so many more in another place, if they be cut downe this is no waste, *per Cur.*

But to destroy a Garden of Apple-trees, is waste by the expresse words of the Statute; that is to say *in boscis, & gardinis, &c.*

And if a Tenant holdeth *ad eundem terminum*, he is punishable in suffering waste, where he suffereth

reth a ruinous house to fall downe, If the house were not ruinous at the time of first Lease made, for if it be ruinous at the time of the first Lease made, and falleth downe in his time which holdeth, &c. *ad eundem terminum*, the first Leasor hath no remedy. But where the house was well repaired at the first, and becomes ruinous after; that tenant in whose time the house falleth downe shall be punished in an action of waste. *Mich. 10. H. 7. fo. 2. Trin. 12. H. 8. fo. 1.*

Action of Waste is against Tenant for yeares, for breaking of a stone or mudde Wall, because it is fixed to the free-hold: But if the tenant for yeares, do plead that his Land-lord did give him leave to pull downe, this is a good plea in a Writ of waste to bar the Land-lord. *Mich. 10. H. 7. f. 5.*

If a house be uncovered and ruinous at the time of the lease made, The tenant for yeares is not bound to cover it, and a good barre to plead in an action of Waste. *Mich. 10. H. 7. fo. 2. &c. per Cur.*

But if the house be decayed at the time of the Lease made, The tenant for yeares in the ground may fell Timber-trees to the repaire of the same, and not be punished in waste therefore; And if the Farmour doe covenant to repaire all the houses, he is then bound to repaire, and maintaine, &c. Or else an action of waste will lye against him; but he may take trees for the same, and if he doe fell more trees then is necessary for the same; Then an action of Waste.

And if the Land-lord is bound to repaire the houses

houses, &c. and will not, the tenant for yeares may retaine so much money in his hands for his rent, and require the same. *Trin. 12. H. 8. fo. 1.*

Tenant for yeares cannot transport the houses, for if he doe breake the Walls of a Chamber, and to make two Chambers of one, and several, this is waste. *10. H. 7. fo. 5.*

If a house is discovered by sudden tempest of weather, this is no waste: But if the Tenant for yeares, &c. doth suffer the same to lye discovered whereby the Timber is putrified and rotten, this is Waste.

But if the house doe fall downe by sudden tempest it is no waste. *12. H. 4. fo. 4.*

But if the house be burnt by the tenant for yeares and his servants, the Law is otherwise.

But if the house be uncovered, an action of waste is not therefore, except the Timber bee thereby perished and putrified. *10. H. 7. fo. 2.*

And if the house of the tenant for yeares, doe fall downe by Tempest, although by action of Covenant brought against him, for not repairing the same, and covenanting to repaire the same, cannot avoide the same; yet if an action of waste bee brought against the Tenant, hee may plead that it was done by a tempest, and this is a good barre. *40. E. 3. fo. 21.*

If the enemies of the King doe burne and destroy, and burne a house; Or if it doe fall downe by sudden tempest, action of waste is not: But otherwise it is if it be destroyed by enemies being traitorous Subjects. *12. H. 8. fo. 1.*

If

If Tenant for yeares doth build up a house upon his lands to him demised where none was before built, and after suffer the same to decay, this is Waste, 12.H.4.*fo.6.4.Ed.3.fo.21.*

If a house doe fall downe by great winde or tempest, the Landlord shall finde the timber, for this is no Waste, and the Tenant for yeares is not bound to reedifie the same. 11.H.4.*fo.21.*

If the posts of a house doe remaine, and the house doe fall downe, if the Gardian of Infant doe pull downe the posts, it is no Waste, for it is no house when it is not walled nor covered.

For if a man doe pull downe the frame of an house which is not covered and newly builded, it is no Waste, 40.*lib. Assis.fo.22.*

If a Furnace be fixed on the ground by Tenant for yeares, and not unto the wals of the said house or posts, &c. fixed by the Tenant, and removed and taken away by him, the Farmour or Tenant commit no Waste, for the house is not impaired thereby.

But the Tenant in Fee simple doth fixe a Furnace in the midst of a house, his heires shall have it, and not his Executors, and the like Law is of Fats fixed in a Brewhouse. 24.H.7.*fo.26. per Kingsmill Iustice.*

And if the Executor of the Tenant for yeares doth raise and pull downe a Copper or Furnace fixed to the ground by the Tenant for yeares, this is Waste. *Pasche 10.Eliz.*

If Tenant for yeares doe make Waste and maketh his Executor, and dyeth, the action of Waste is

is gone, for it is a trespassse which is a personall action which dieth with the person; but if his Executor doe make Waste, action of Waste is lyable against them. 23. H. 8. *iss.* 134.

Tenant for terme of yeares may fell Timber to amend the houses and to doe reparations, for if the houses be decayed by default of the Termor, then if hee felleth Timber to repaire them it is Waste. *Fitz.* 59.

If a Stable bee ruinous at the time of a Lease made, and after it falleth downe, the Tenant for terme of yeares may fell Timber to make a new house; but if there was no house before there, the tenant cannot fell timber to make a new house. 11. H. 4. *fo.* 32.

If a ditch be made through a Meadow, whereby the Meadow is made better or amended, this is no Waste, but if an action of Waste be brought for this ditching in the meadow, whether the Tenant may plead, *Nul wast fact*, that is, that he hath done no Waste, and give the speciall matter in evidence, or whether he may plead this matter in Barre, a doubt. *Hil.* 20. *Eliz.* *Dyer.*

Lease is made upon Condition that the Lessee shall not make any Waste, after he suffereth in the decaying of the houses, adjudged that the Condition was broken, for the Statute of Gloucester is for doing of Waste, and therefore permission of Waste is punishable, because these words (any Waste) is generall, *per Dyer & Welch Iustic. Mich.* 12. *Eliz.* 281. *Dyer.*

Tenant for terme of yeares taketh his Lease
and

and dyeth, the Executors doe commit Waste in rayfing of a Copper or Furnace, fixed into the soyle or land, by the Termor himselfe adjudged Waste.

For Executors cannot take any thing of the Testators but his Chattels, and those things which are parcell of the freehold, the heire must have and not the Executors; As a Furnace of Leade fixed in the middle of the house, although it is not fixed in the wals, Fats fixed in the ground in a Brew-house or Dying-house, these things pertain to the free-hold, and descend to the heire with the inheritance: And also they passe by Feoffment, with the freehold, and pales that make inclosures, the heires shall have and not the Executors, dores and windowes the heire shall have and not the Termor, although they bee not fixed or hanged, because a house is not perfect without dores and windowes. But otherwise it is of glasse, for a house is perfect without glasse & tables dormant, and Evidence the heire must have and not the Executors, which cannot be forfeited by outlawrie, for they are parcell of the freehold, but if they be fixed by the Termor he may during his terme take and remove them, but not after, but being fixed to the wall or posts by the Termor, he cannot remove them or take them, *Trin. 21. H. 8. fo. 14. Hil. 5. H. 7. fo. 17. & 21. H. 7. fo. 6. per Kings mill Justic.*

Tenant for terme of yeares doth covenant to repaire the houses, &c. at his proper costs and charges, the houses be decayed in Ground-cels,
the

the Tenant for yeares felleth trees upon the same lands, and doth reparations, The Landlord bringeth his action of Waste, the Tenant justifieth for reparations, the Landlord cannot reply by reason of the Covenant, for as concerning that he is to put his action of Covenant, and so if the Landlord doe covenant to repaire and doth not, the Tenant may fell trees and justifie the same in an action of Waste brought against him. *Dyer 198. 10. Eliz. Pas.*

A man demiseth divers Closes by these words, Demiseth, granteth and to farme letteth unto mee Lands &c. Together with all manner of Timber wood, under-woods, and hedge trees, except the great Oakes in such inclosure. I being Tenant for yeares, doe fell and cut Timber in places of land in which no exception was, this was adjudged Waste: For if I have Timber trees demised unto me, I cannot fell nor cut them downe: and this word Grant in the demise or Lease, doth not alter the demise. *Hil. 22. Eliz.*

Waste assigned in cutting or felling of tenne Oakes, the Defendant justifieth the felling of three of them, and that hee did imploy them in making six posts to separate severall closes there, and doth not alledge how many Closes, and doth alledge by prescription such a kinde of Inclosure, and doth not alledge that all the three Oakes were altogether imployed, nor that indeed the Inclosure was made, whereupon Judgement was given against the Defendant.

And for the other 7. Oakes felled, the Defendant

dant justifieth, because the were *Aride, cave & in Culminibus & putride*, withered and white in the tops, being not sufficient Timber for building, this was a good plea *per Dyer* chiefe Justice, because these woods doe amount unto that which is in the common presidents, which are these, that the trees were dead, and did beare no fruit nor leaves in Summer.

But to pleade that therefore it was not sufficient Timber, was of no purpose or effect, for it may bee otherwise imployed. *Pas. 16. Elizab. Regina.*

A writ of Waste is not against Tenant in Mortgage, nor yet an action of Account, because hee hath an estate in fee Conditionall. *N. Bre. fo. 38.*

Executors cannot maintain a writ of Waste, but an action of Waste may be brought against them. *Natur. Bre. fo. 38.*

If Waste be committed in the time and life of the Father, his Son shall not punish this Waste after the death of his Father, because it is a personall punishment, and it is a thing which cannot descend, and it is a personall action which dyeth with the person. *P. 13. H. 7. fo. 20.*

If the Lease of Tenant for yeares is ended, hee in reversion cannot have an action of Waste. *per Finex Justice. Trin. 9. H. 7. fo. 8. in Rescous.*

Waste assigned in a Parlour, price 40.s. in a Chamber, 20.s. in the Kitchen, 10.s. The verdict did finde the Waste in all these places, and the Plaintiffe recovered the places wasted and treble damages. *Mich. 18. H. 8. fo. 1.*

A Lease is made unto a woman for yeares and she marrieth a husband before the Lease is expired who maketh Waste, and the wife dieth, Action of Waste is against the husband for that hee had the occupation; The like Law is where a Lease is made to a woman for life; who after marrieth a husband. *Brooke titulo 47.*

It is Waste to cut downe for Fewell greene wood where there is sufficient rotten wood. *23.E. 3. titulo 32.*

But it is no waste to fell seasonable wood that hath beene used to be felled every 20. yeares, or within that time. *Fitz. Nat. fo. 59.m.*

And to fell and destroy White-thorne is Waste, but not Black-thorne. *9.H.6.fo.10.Ed.3. fo.77.*

If Tenant for yeares doth not reaire the banks of his land which hee holdeth by Lease whereby the land is drowned, or if he diggeth for sand, gravell, or coale, or plough up meadow, or suffer meadow to be drowned which will be rushie and nothing worth, or arable land to bee drowned, this is wast. *20. H.6.fo. Fitz. H. fo. 59. Nat. Bre.*

But to suffer the land to lie fresh-land and untilled whereby it is overgrowne with thornes, &c. this is no Waste, *Fitz. 5. N.B.*

King Henry the eight made a Lease for terme of yeares to Colthurst, &c. (excepting great Trees) after the King granteth the reversion and the trees unto the Duke of Norfolk, the Duke demiseth the land and trees to Bennish without

out impeachment of Waste.

The Duke is attainted of Treason, whereupon the King granteth the farme unto *Saunders*, *Saunders* enfeofeth *Draper* of these lands in fee, and was bound to save harmlesse the person of *Draper* and the premisses, or touching any interest, and *Bennish* pleadeth his Lease made unto him by the Duke, and felleth trees, but because in his replication hee doth not shew that hee claymeth the trees by vertue of his Lease, neither maketh conclusion, that therefore he was damnified, Judgement was against him for lacke of forme of pleading.

But for matter in Law, the Justices did doubt whether this was the breach of the Condition of the Obligation made by *Saunders*, for if *Bennish* felleth the trees by vertue of his Lease wherein the trees are demised to him, he doth against the Law, for the tenant for yeares cannot fell trees although they be demised unto him, for he hath no interest or profit but only of the branches, and the acorns, and the fruit of them. And by the exception of the trees unto the King in the Lease which he made to *Colshurst*, the King had nothing in the trees but as a Chattell, and *Bennish* the Tenant of the Duke without impeachment of Waste by lease, hath no profit or propertie by demise and lease of Trees by these words, Without impeachment of Waste, without grant by deed made of the same.

For these words in the Lease, *Absque imperitione vasti*, i. without impeachment of Waste, giveth

Bennish the Tenant no propertie thereof.

For if a Stranger felleth and cutteth downe the trees, *Bennish* the Tenant cannot have the Trees, but an Action of trespassse, wherein he shall recover damages for the trespassse done in the ground and land, and for the branches and boughes of trees, and not for the trees and timber. *Pas. 2. Eliz. Dyer 185.*

Action of Waste was brought against the Tenant for life, who pleaded that the plaintife did command him to commit the Waste, that was to dig gravell, adjudged no plea *per Cur.* and the commandment was void, for the Landlord hath no power to command his Tenant during the life of his tenant for life, for the Tenant for life may have an action of trespassse against the Landlord for digging of the land, and this gravell and land is parcell of the inheritance of the Lessour, as well as the Reversion and the Inheritance is in him, then a grant by a naked promise is not good any thing can proceed thereby; and this action of Waste is ordained by Statute, and a Commandment by word, which is but naked, and matter in *faite*, and not by matter in *escript*, which can barre a Statute. *Hil. 2. H. 7. fo. 13.*

For matter in *faite* is not good to answer or discharge matter in writing, *per Trin. 19. H. 8. fo. 9. Pas. 1. H. 7. fo. 14.* Nor a Concord is no plea, *Hil. H. 7. fo. 13.*

Waste was assigned in cutting and felling wood where the Defendant did but lop wood, the Defendant may pleade, *Nul waste fait*, and give the speciall

speciall matter in evidence. *Mich. 1. Mar. Dyer 92.*

A recovery was had in an action of waste and judgement which was reversed by a Writ of an Error, and the first error was because it was Recorded, *Quod querens obtulit se quarto die per Astornatum*, and doth not name the Attorney.

The second Error was, because the Writ alleadgeth seisin unto the use of the Father, the plaintife, and to his heires without shewing the state of the Feoffees, but is shewne in the assignement of Waste.

The third error was, because he did not shew how the use of the particular estate did begin.

The fourth error was, because the plaintife doth shew that *Atkinson* holdeth the Land for terme of his life, the reversion unto the plaintife, and doth not say *spectant*, *Mich. 1. Mar. Dyer 93.*

If the reversion of Lands doe come unto a man lawfully, he shall have the Rent with the reversion, and shall have an action of debt for this Rent, or action of Waste, because the Lord maketh privity betweenethem. *Pas. 5. H. 7. fo. 19.*

If a Lease be made unto me, reserving Rent, and after my Land-lord maketh a feoffment to me in fee of the same Land demised unto me, and after, I doe enter and commit waste, an action of waste is liable against me by the feoffee of my Land-lord, because the Law maketh a privity betweene me and the feoffee of my Land-lord. *Pas. 5. H. 7. fo. 19. Mich. 3. H. 7. fol. 1. in waste.*

If a Lease is made for terme of yeares, and the

Tenant granteth over all his terme unto another, The Land-lord may have an action of Debt against the second Lessee and an action of Waste, for the Land maketh privity betweene him and the second Lessee.

But otherwise the Law is, if the first Tenant for yeares doth grant but some parcell of his yeares, then there is no privitie betweene the Land-lord and the second Tenant; And therefore no action of waste, or debt is to be brought against the second Tenant, but against the first Tenant, because the privitie remaineth betweene him and his Land-lord, for granting parcell of the terme of yeares and not the whole terme *Paf. 5. H. 7. fo. 19.*

In an action of Waste, brought against Tenant for life, he may plead that the plaintife hath granted the reversion unto another by Deed, unto whom he hath attourned, a good plea, *per Finneux* Chiefe Justice, otherwise he might be twice charged, *Tr. 5. H. 7. fo. 34.*

That the Lord shall have a Writ of waste, after that the reversion is Escheated unto him, and yet there is no privity betweene them. *Mich. 5. H. 7. per Brian & Cur.*

If a man maketh a Lease for a year, if the Lessee doe make waste, the Leasor shall have his Writ of Waste, and the Writ shall say *quas tenet ad terminum annorum*, and in the declaration he shall shew downe the speciall matter. *Fitz. fo. 60. D.*

Tenant in Taile after possibility of issue extinct, shall

shall not be punished in waste.

If a man doth acknowledge a Fine in Reversion, he shall not have an action of waste: The Cognisee shall not have a Writ of Waste against the Tenant before he have attourned.

But if a man doth devise a Reversion of Land to another in fee, the Devisee shall have a Writ of Waste without attournement, and the like Law is where the King by his Letters Parents doth grant a Reversion; The Grantee shall have a Writ of Waste without Attournement. *Fitz. fo. 60. l.*

If an action of Waste be brought for the falling downe of an house, and the Tenant doth build it up againe, the action will faile. *Pas. 13. H. 7. fo. 21.*

Action of Waste is against Tenant for terme of life, Tenant in Dower, Tenant by the curtesie of England, Gardian in Chivalry, and against tenant for terme of yeares, for if they commit Waste, they in reversion shall punish it.

And the Proceffe against them is a Summons, Attachment, and a Distresse: And if the Tenant doe not appeare, at the Distresse; Then shall the Sheriffe be commanded, that he shall make an Inquisition of the Waste by an Inquest, And if the Waste be found, and returned, the Plaintife shall recover the place wasted, and treble Damages, but Inquest must finde but onely single damages, and the Court shall make them treble *per Stat. Gloucester cap. 5.*

And if the Sheriffe upon a Writ of Attachment, upon an Action of Waste, &c. where Attachment doth lye, doth attach a Cow, or a Geld-

ing, &c. for his appearance at *Westminster*, the property of the Cow, or Gelding, remaineth in the man which should appeare, untill the day that he maketh default in appearing: And if the Sheriffe doth attach the Cow, &c. and suffer the same to be in the possession of the man attached, yet at the day when the man attached doth not appeare, but maketh default, the Cow, or Gelding is forfeited, and the Sheriffe may take it away at the first, *per Cur. Mich. 9. H. 7. fo. 9.*

A Lease is made for terme of yeares of a Wood, the Termor maketh waste in one corner of the Wood, this corner is onely forfeited; But if the Termor maketh waste in divers places in the same Wood, the Wood is altogether forfeited: And also the plots in the same. *15. H. 7. fo. 11. per Finesse Justice.*

But if a man doe make waste in a Hed-grow, which doth inviron, or compasse about a Pasture, nothing shall be recoverd, but the place wasted, the circuit or compasse of the roote, and not the whole Pasture. *4. E. 6. per Bromley, tit. 136.*

If Tenant for yeares hath a Lease made unto him, to occupy the same, after the profitablest manner that he can, yet he cannot pull downe houses nor doe waste. *17. E. 3. tit. 101.*

If Tenant for life committeth waste, and after surrendreth his estate, and the Land-lord, or Leafor accepteth it, the Tenant shall not be punished for this waste. *14. H. 8. fo. 111. Na. br. fo. 36.*

If a Stranger doe make waste upon the Land which is let to me for yeares, or for life, I must be puni-

punished therefore in an Action of waste. 5.H.4.
fo.3. 3.H.6.fo.17.

But if a Stranger doe make waste in Land in Ward, the Gardian and Socage shall not be punished for the same. *Fitz.fo.60.Na.Br.*

And if the Land lord himselfe do make waste, the Tenant shall not be punished therefore. 5.H.4. fol.3.

And if the Land lord doth covenant with me being his Tenant for yeares, to deliver me Timber out of the same Land to repaire my house, demised unto me, and he will not, for lacke whereof I doe not repaire, but let the house fall downe; I shall be punished for this waste: But if the covenant was that I should have the Timber out of other Lands, which is not delivered unto me, this shall excuse me, and discharge me in waste. 44. Ed.3. fol.21.

If Tenant for years doe make waste, before he doe attourne, he shall not be punished in waste. 48. Ed.3. fo.15.

If a Widow being Tenant for life, marieth a husband who committeth wast and dieth, action of waste shall be brought against the wife.

But if a Lease be made unto the husband and wife, and the husband committeth waste and dieth, the wife shall not be punished; But if the Termor committeth waste and maketh his Executors and dieth, The action of waste is extinct, because it is *Actio personalis qua moritur cum persona*. But if the Executors commit waste, Action of waste is against them. *per Cur.23.H.8.tit.138.Nat.br. fo.36.B.3.E.3.tit.20.* If

If a Gardian in Chivalry do commit waste and after doth grant over his Estate, Action of waste is against him, But if he doe grant over his estate and the Grantee doth waste, he shall be punished in waste.

And if tenant for life or for yeares commit waste and grant over their estates, the Writ of waste must proceede against him which did the waste.

But action of waste shall alwayes be brought against tenant by the curtesie of England, and tenant in Dower, although they grant over their estates the Writ of waste must proceede against him which did the waste.

But an action of waste shall alwayes be brought against tenant by the curtesie, and tenant Dower, although they grant over their estates. *Fitz. 550.*

If an action of waste is brought against tenant in Dower or against the Gardian, or against tenant by the curtesie; The rehearfall of the Statute needeth not, that is, *Cum de consilio Regni nostri Anglia, &c.* But action of waste against tenant for life, or against tenant for yeares by demise, the Statute must be rehearsed. *Fitz. 55. & 56. B. in Waste.*

If a Gardian doe commit waste, and the heire being within age doe recover against him in a Writ of waste, the Gardian doth lose his Ward and damages as much as the waste doth amount unto: But if the heire be of full age, then he shall recover treble damages according to the Statute of *Glouc. Fitz. fo. 6. T.*

A Lease is made of Lands for life, And the Leasor hath issue two daughters and heires, dieth, one of them marrieth a husband, and the tenant for life granteth all his estate unto the husband and wife which are in Reversion, this is no surrender *per Curiam*, for if they make waste, the other Sister shall have a Writ of waste against them in all their names, and the husband and the wife shall be summoned and severed. *Mich. 21.H.7.f.40.*

In an action of waste for felling of Timber, the price of every tree must be set downe and declared. *14.H.8.f.21.*

Felling downe of Apple-trees, which lieth downe upon the ground, and yet beareth fruit, is waste. *44.E.3.f.44.*

And felling downe of Apple-trees is waste. *10.H.7.f.2.*

But if they be blowne downe by the wind, and after be dry, the Termor may have them. *7.H.6.f.40.*

A Writ of waste is not lyable against the tenant by *Elegit*, nor against tenant by Statute Merchant or Staple: But if they commit waste, he in the reversion may have a Writ of accompt, and they are accomptable after the debt and damage levied. *Natur. br. f.37. Fitz. 5.8.H.*

Emble-

Emblements, Corne sowne.

IF I am disseised of my Land, and my disseisor soweth the Land with Corne, and after hee moweth and reapeth the Corne, And after I re-enter, I shall have all the Corne, the Trees, Woods, Fagots, and Hay, which are severed and divided, and which doe lye and are upon the land, *per Brian Chiefe Justice, & per Fineux Chiefe Justice of England, & per Townsden Justice*, but holden heretofore contrary, That the disseisor should have the Corne severed from the ground, Nevertheless the entrie of the disseisee by the labour of his hands and industry gained, but not such things gained, as did come by the act of God, and by the nature of the Soile, as Hay made of grasse, Trees, and woods felled and made into Fagots, Apples, Nuts, Peares, &c. But now at this day, it is adjudged that the disseisee by his entrie shall have the one as well as the other, that is as well all the Corne sowne and severed as the rest if they lye and are upon the ground, *12. H. 7. fo. 27. 37. H. 6. fo. 25. 25. H. 7. fo. 1. & 14. Edw. 4. fo. 6. per omnes Iusticiarios.*

If Lands are letten at will, if the Tenant at will doe sow the Land, and the Leasor infeofferh me of the same Land, and the tenant at will do sever the Corne from the ground, and I take them away; Or if I sever them from the ground & take them, yet the Tenant at will shall have them, for I cannot take them except it be for damage Feasant.

If

If a Parson of a Church doe dye after the first day of *May*, where the Land is sowne before by the Parishoners and he dieth, and another Parson is chosen and made, and after the Corne of the Parish is severed; The Executor of the first Parson shall have the Tithes, and not the last Parson.

And if a man doe sow Corne and dye before the severance, the Executors shall have the Corne and not the heire. 21. *H. 6. 30.*

But if the Parson dyeth before the Conception of our Lady, his successors shall have the sowings of Corne in the land, and not the Executors of the first Parson. 39. *H. 6. fo. 38.*

The husband maketh a Feoffment in fee unto the use of himselfe and his wife for life, the Remainder &c. the husband soweth the land and dyeth, the Wife shall have the crop of Corne, and not the Executors of the husband, for the wife was joynt Tenant with her husband: but otherwise it had beene if the Wife had a Remainder limited unto her, and if the husband sowed the wifes land and she dyeth, the husband shall have the Crop, and if the husband doe sow his land with Corne and dyeth, and the third part of the same land is assigned to his wife for her Dowry, hee shall have the Corne sowne on the same ground, but in this point five Justices were against fower, *Mich. 15. Eli. Dyer. 316.*

If a man recovereth land by assise or other Action, he shall recover all the Corne growing on the land, and all other things growing, &c. *per Cur. 19. H. 6. fo. 45, 46.*

If my tenant for life doe alien the land in fee, the land which hee holdeth of mee, and I enter upon the land, I shall have all the Corne sowne on the land which were sowne in the meane time betweene his alienation and my entrie. 40. *Ed. fo. 5.*

If a man bee seised of Land in the right of his wife, letteth the same for terme of yeares, and the husband dieth, and the wife entreth, yet the tenant for yeares shall have all the Corne on the ground: and note that the Law is so in all cases where Leases are determined by the death of a man. 7.H.4.*fo. 17.*

If tenant in Dower soweth the Land, and shee marrieth a husband who maketh his Executors and dyeth before the Corne be severed, the woman shall have the Corne sowne on the ground, and not the Executors of the husband; But otherwise the Law is if the husband had sowed the land and dye before the Corne is severed, for then the Executors of the husband shall have all the Corne on the ground, because the same did come by the cost and charges of the husband, *per Fundamentum Legum. fo. 72.*

A Will made by a Widow of her crop of her Corn on the ground is good as wel of that which she holdeth in Dower, as of other her lands and tenements, *per Stat. Merton, 20. H. 32.*

And if I am outlawed in an action personall, I forfeit all my Corne upon my land, *per Cur. 5. H. 7. fo. 76.*

If a Lord of a Manor doe seise the Copyhold land

land of his Tenant for not doing his services, the Tenant shall have the Corne which were sowed before the seisure; but the Lord shall have the Corne growing at the time of the seisure. *Plaf. 2. Ed. 3. fo. 15.*

Note that a man cannot give his Corne growing on the land without deed. *25. E. 3. fo. 41.*

If I recover land against a man which is condemned in a fine to the King, and the Sheriffe hath seised the Corne on the ground which I have recovered, for the Kings fine, the King cannot put me in possession of the land which I have recovered untill the Corne bee severed from the Kings fine. *18. Ed. 3.*

If a man disseiled and my disseisin doth sow Corne on the land, and reapeth the Corne, and severeth the same before I reenter, I have lost the Corne; but if I had entred before the Corne had beene reaped, mowen downe and severed, and disseisor entreth on me againe, and cutteth downe the Corne, and severeth the same, yet I shall recover this Corne, Hay, Fagots, Nuts, Apples, and such like severed by my Disseisor and fallen on the ground, if I reenter I shall have them; but if the Disseisor removeth them out of the same into any other land, it is doubtfull whether I may take them, for the propertie of them cannot bee knowne no more then of money; And if my Disseisor selleth the land which he hath wrongfully taken and infeoffeth another, and his Feoffee soweth the land, it is all one.

But it seemeth that if the Feoffee upon condition

Condition.

tion doth reapedowne Corne, and sever the same betweene the Condition broken and the reëntrie of the Feoffor, yet the Feoffor shal not have them. 7.H.7. fo. 17.

Propertie of Goods.

Where propertie of goods are knowne, and where not.

IF a Tanner is possessed of two dickers of Leather, and delivereth them unto *Atkinson*, who giveth them unto a Shoemaker, who cutteth the Leather out, and maketh Shooes and Boots thereof; the Tanner taketh the Shooes and Boots from the Shoemaker, and upon an Action of trespassse brought against him hee justifieth the taking, &c. For where any thing is taken from a man, and the owner thereof doth know it, hee may take it againe although other things be mixed thereunto; As, if a man doe make me a garment of cloth delivered unto him, I may take it although other things be mixed therewith, for the nature thereof is not changed; And if a man taketh a timber tree of mine and squareth it out in timber, yet I may justifie the taking of it, because it may bee knowne, and so it is of Iron put into a barre: But otherwise it is where a thing taken away cannot be knowne, as where Barley is taken and turned into Mault, or money taken and is after turned into a Goblet, or a cup of silver turned into coine or money, and if a man doe fell my timber and make a house thereof, I cannot take the timber, for the nature thereof is altered to a free-

freehold and therewith the propertie altered. 5.H.
7.*fo.11.*

The Defendant in a Replegiare may claime
propertie in the Cattell or of other goods di-
strained.

Propertie of
goods claimed
in a Replegiare.

And if the propertie bee claimed before the
Sheriffe, the Sheriffe cannot grant a Replevin,
but the propertie must be tried by a Writ of *Pro-
prietate probanda*. But if the propertie of goods,
&c. bee claimed by Replegiare in the Common
Plees, &c. There it shall be tried by issue, *per Bri-
an. 21.E.4.fo.64. & 26.H.8.fo.6.*

If the Sheriffe in a Replegiare returne that the
Defendant claimeth propertie, &c. whereby the
Writ of *proprietate Probanda*, issues forth, which
is for the Defendant, the Plaintife shal get nothing
by this Writ.

And if the Defendant claimeth propertie of
&c. in Court, and it is found that hee hath pro-
pertie, the plaintife shall recover in damage. 7.H.
4.28.

Note that if a man bee possessed of any thing
delivered unto him, there during his possession,
hee hath propertie against all men except him
which delivered the goods. 11.H.4.*fo.17.* 7.H.7.
fo.18. 21.H.7.*fo.14,15.* 2.H.4.*fo.22.*

In an Action of trespassse it is no plea to say the
propertie of the goods were in the plaintife, but
otherwise it is in a Replegiare, but *per Brooke* Ju-
stice opinion, it was no good plea in the Defen-
dant in a Replegiare to claime a propertie of, &c.
But as hee thought it was no good plea in the

E

plain-

plaintife, for a man cannot have a Replegiare without a propertie or a speciall possession. 27.H. 8.*fo.25.*

If goods be sold in open Market, as in London, which hath a Market every day in the weeke, if they were stolne goods, or goods delivered to be kept, or goods found, yet being so sold, the owner hath lost the goods, and the propertie thereof, but being not so sold, hee may twenty yeares after justifie the taking of them, or else recover the possession of them by a Replegiare, but if any such goods are sold in an open Market by fraud or covin betweene the buyer and the seller, and where the buyer doth know that the seller did come to the possession of the goods wrongfully, &c. This sale in an open market doth not take away the propertie, but the owner may take them. *per Cur. 33.H.6.fo.5.*

If a man taketh my goods or money and offereth the same to an Image, in this case I am barred as if the goods had beene sold in an open market or faire, but if the goods, &c. doe chance to come into the hands againe of the first Transgressor which did take my goods, then I may take them againe; as if a Disseisor infeoffeth his Father or cosin which dieth seised, and the Disseisor is heire, the Disseisee may reciter him, *Quod fuit concessum. 34.H.6.fo.10.*

And if the buyer of goods doth know that the seller of the goods did take them without right and title, and then did sell them to him in an open market, then the propertie is not altered and the

the owner may take them. 35. H. 6. fo. 5.

If a man doth enter into my freehold and doth cut downe trees and make timber of them, yet the propertie of them is in me being the Freeholder and owner of the ground untill such time as it is carried from them, and yet the cutting or carrying away of the same is not felony. 35. H. 6. fol. 2.

The propertie of the Ornaments of the Church, as Bels and such like, are in the Churchwardens, and they shall have an appeale or an Action of trespassse for them, but otherwise the Law is of things that are annexed to the Church. 11. H. 4. fo. 4.

A man hath propertie in Hounds, Hawkes, Apes, Mastiffes, Thrushes, Popinjays, and such like, (being of a wild nature) and made tame by the labour and industrie of the owner, and shall recover damages in an action of trespassse brought against him that shall take them; and yet if a man doth give all his goods and chattels, &c. such things doe not passe by such a deed of gift *per Eliot Justice*; And if they bee taken away, the owner of them cannot recover them by a Replevin or Action of detinuit, *per Brudenell Justice*; for the propertie of them are not propertie knowne, and yet in an action of Trespassse a man shall recover damages for the taking of these things, and tithes shall not be paid of such things. 12. H. 8. fo. 4.

If I enchafe a Hart or Stag out of the Forest into my owne ground, and there I kill him, and

the Forrester pursueth mee and taketh the Hart from me, and I bring my action of Trespasse against him for taking of a dead Hart and carrying away of the same, I shall be barred, &c. for so long as Hart, Stag, or any Fowle, or any such savage is in my land, I have possession of them, but not propertie: So I which did chase this Stag out of the Forrest into my owne ground and there killed him, I must lose him, for the Forrester must have him if he pursue him, for he may be knowne by the skin, hornes, &c. But if the Stag, or &c. doth come into my land of himselfe, there I may kill him and take him, for then being *fera natura capias qui capere potest*; So there is a diversitie when a man will constraine such a Savage of his owne wrong to go out of his Forrest and Walke, and when he cometh out of the Forrest himselfe. 12.H.8.*fo.10.*

And if I suffer my Fawlcen to flye at a Feasant which doth kill the Feasant in the ground of another man, I may insue and take it, and I shall not be punished therefore, except it bee for entring into the ground, for the taking of the Feasant was a possession in me thereof, and so it is where my Hounds doe kill; &c. a Hare or any other Savage beast, *per Brooke Justice.* 12.H.8.*fo.10.*

Propertie of
goods tried.

But if the Defendant in a Replegiare doth claime propertie of the goods distreyned before the Sheriffe, it shall be tried by a Writ of *proprietas probanda*. But if the propertie is claimed in the Kings bench, the propertie shall be tried there by twelve men. 21. E.4.*fo.26. supra mesme las.*

If

If a man doth let to farne ten Oxen for yeares and after hee is condemned in 10. l. these Oxen shall not be put in execution by a *Pieri facias* during the terme of yeares, and yet the debtor hath propertie in Reversion. 22. E. 4. fo. 10.

Cattle demised cannot be put in execution.

Where controverſie of Tithes is betweene the Parſon and Vicar, and the Parſon claimeth the Tithes, the propertie of them is in him before the carrying and without the carrying. 22. E. 4. fo. 23.

Property of Tithes.

If the Defendant doth claime property in *Replegiare* before the Sheriffe, the power of the Sheriffe is determined, and the Plaintife may have a Writ of *Proprietate prebenda* directed to the Sheriffe to inquire of the propertie. 14. H. 4. fo. 25.

Property of goods detained.

And it is to be noted that a man may ſeiſe the goods of the Kings enemies and bring into this Land and hold them to his uſe, *per Juſticiarios*. And if a man taketh goods from the enemies of the King, which enemies did take the ſaid goods before from an Engliſhman, hee ſhall have the ſame goods as things gotten in battaile, And neither the King, Admirall, nor the party unto whom the goods were before, except he cometh freſhly the ſame day the goods were taken from him before the Sunne going downe, and claime them, ſhall have them, *per Ravifor Juſtice*.

The property of them in the taker.

It was agreed *per Juſticiarios*, That if a Frenchman dwelleth in England, and after Wars are Proclaimed betweene England and France, No man can take the goods of any Frenchman, becauſe he was here before: But if a Frenchman commeth into the Land after Wars proclaimed,

whether it is by tempest or otherwise by his own will, or by offering himselfe to yeeld being in fight, or being taken in standing to his defence, Any man may arrest him, and take his goods and property of the same, and the King shall not have them, And thus it was put in use and in ure the same yeare betweene the Englishmen and the Scots, and the King himselfe did buy divers prisoners, and their goods, the same yeare that *Bullein* was conquered, of his own Subjects. 7. Ed. 4. f. 14.

Replevin and second deliverance.

IF I bring a Replevin for my Cattle distrained, and doe bring my action of trespassse against the distrainor, and he avoweth for Rent, and justifieth for trespassse, if I am non-suited or if the Advowant doe recover against me, he shall have a *Returna habendo*, of my Cattle, and here-upon I cannot have a new Replevin for my Cattle, For the Statute of *Westminster* 2. is that in a Writ of *Returna habendo*, upon a non suite the Sheriffe shall have command that he shall make no Replevin to the plaintife of his Cattle againe except it be by VVrit of false judgement, in the which mention is made of the judgement by the Justice given, which cannot be except it be by a Writ coming from the Rowle, and Record of the Justices, before whom the complaint was made, and the suite begunne, which VVrit was called a second deliverance, and so the Statute doth determine,

mine, that no more Replegiare shall issue for the plaintife to have his Cattle againe, but a VVrit of second deliverance *per Cur. Mich. 12. H. 7. fo. 6.*

Second deliverance.

And if two men be distrained, and they bring their Replegiare, and the defendant doth avowe, and the plaintife are non-suite, the one of them cannot sue a second deliverance for parcell of the Cartell, and the other a second deliverance for the rest, for this is a judiciall VVrit, and must agree with the Record of the first *Replegiare*.

Two men distrained.

Second deliverance.

If the plaintife in a *Replegiare* declareth of twenty Oxen taken and after he is non-suite, the defendant hath a Retourne of the Cattle, if the plaintife doth sue a second deliverance and declareth that the defendant hath taken forty Oxen, he shall not be received to maintaine this declaration, for hee must not vary in the number of the Cattle specified in the declaration of the first *Replegiare*, *Mich. 12. H. 7. fo. 6.* And if the place where the distresse was first taken is set downe in the declaration of the plaintife in the first *Replegiare*, he cannot vary from the same place in the Writ of a deliverance, because it is a judiciall VVrit, and must agree with the Record of the *Replegiare*.

In a second deliverance the plaintife must not vary.

If the plantife in a *Replegiare* declareth of twenty Oxen taken from him: And the defendant saith, that he did not take twenty Oxen, but twenty Geldings, the which were Replevied by the Sheriffe, and maketh avowry for Rents, &c. and the plaintife is non suite, whereupon a retourne of the Cattle is given to the avowant, In this case the plaintife of the other twenty cattle which he did

The plaintife in a *Replegiare* loseth his Cattle.

not declare of first in the *Replegiare*, was without any remedy *per Vavisor Iustice*. *Mich. 12.H.7. fol.6.*

In a second deliverance, the Plaintife may vary.

But *Trin. 21.H.7. fo.28.* the opinion of the Court was that in a second deliverance the plaintife might vary from the day, and place supposed in the *Replegiare*; And the reason is, because the Statute of *Westminster* the 2. is to abridge the Common Law, that is not to have *Replegiare* infinite, but a second deliverance. *Trin. 26.H.8.fo.6. Pas.21.H.7. fo.24.* And he may in the number of the cattle in the second deliverance vary from the number of cattle mentioned in the *Replegiare*.

Avowry in distress for an Heriot.

If a man holdeth Land of me by Homage, fealty and certain Rent, and that at every Alienation made by my Tenant, &c. That he and all his Ancestors should forfeit to me a Heriot, the best beast they had; And that I and my Ancestors have used to have the best beast for a Heriot, If the Alience doth not give me knowledge being Lord, that he hath purchased the Land before the death of the feoffor; If that my tenant do sell this Land and have not made me to take notice thereof during his life, I may take the best beast that the Alience hath for an Heriot: And if I distraine for the same, and the Alience doth bring his Replevin, I may advow, and my advowry good, *per Cur. Hilar. 8.H.7. fo.8.*

Prescription.

And adjudged a good Prescription, because it hath a good beginning, for Lords of Mannors may condition with their tenants at the first beginning, that

that they shall not aliene without their assent, and if they do, that they shall forfeit or give unto the Lord a heriot, &c.

And if such a Tenant doe aliene, yet at every Alienation he shall make fine to the Lord, this is a good prescription annexed to the tenour, and this is the tenure of the Dukedome of Gloucester.

A man cannot distraine for heriot custome, for that must be had by seizure when it please the Lord, for the property is in him presently after the death of the Tenant.

But for heriot service it is otherwise, for of that the Lord hath no property after the death of his Tenant; but he must have it *ratione tenure sue*, and he must distraine therefore, because the Land is charged therewith: For in whose hands the Land commeth into, the Lord may distraine, as if the Tenant holdeth to give to the Lord every third yeare his beast, he cannot take it but distraine for it: And so it is for arrerages of Rent, and so for Heriot service a distresse and for Heriot custome no distresse but a seizure. *Hil. 8. H. 7. fo. 8.*

Heriot Custome is where the Lord must have at every surrender or every alienation a Heriot.

Heriot Custome.

Heriot Custome is to have after the death of the tenant for life, or yeares, for Heriot service is after the death of the tenant in fee-simple. *21. H. 7. fo. 16. & 13. 21. H. 7. 8. H. 7. fo. 11. 14. H. 4. fo. 5.*

Heriot Custome.

Heriot Custome may be due after every alienation as the custome will serve.

Heriot Custome.

But if a man adjudged as it appeareth in *Plowden* his commentaries that a Lord may seise an Heriot

Heriot Service.

Heriot service as well as for a Heriot custome.
fo. 16. as in woods, & all.

Goods seised
 for Heriot.

Note that Heriot is due after the death of the Tenant, And the Lord may seise for Heriot custome, the Heriot and he may seise for the goods of the dead; But for Heriot service hee must distraine upon the Land.

Two heriots
 payed.

A tenant holding Land by Heriot doth sell any parcell of the Land, both of them must pay Heriot unto the Lord because it is an intire thing.

Two heriots
 paid for one
 Land.

And if the tenant do purchase the Land againe, yet if the Lord were once seised of an Heriot by the other man, which did first purchase the Land in parcell, The Lord shall have for every portion a Heriot, of the tenant which did purchase that parcell againe, *per Willoughby, & Shard Justices. 34. E. 3. in Replegiare Fitzh. 15.*

Tenant must
 dye sole seised.

The Lord shall have a Heriot although his tenant died not seised, for it is sufficient if he died his Tenant although hee died not seised. *1. & 7. H. 4. fo. 17. but the Tenant must die sole seised, &c. or else the Lord must have no Heriot. 24. Ed. 3. abr. in Heriot: For if joynt-tenants are of land heriotable, if one of them do dye, the Lord cannot have a Heriot, but after the death of the other. Mich. 24. E. 3. Abridg. Fitzh. 3. fo. 54. in Heriot.*

The heriot
 must be the
 best beast.

If a Tenant holdeth Land by Heriot service to pay his best Cow, Oxe, or Horse, and at the time of his death he hath a Cow, which is the best beast, if the Executors doe take the Cow, and sell it, yet the Lord may seise the same being in the house of the buyer; But if it were sold in an open Market

Market, the Lord cannot have it except it were sold by covin. 16.E. 3. *Abridg. Fitzh. fo. 54. titulo. 2. in Heriot.*

If the Lord distraineth and avoweth for Heriot service, he must alledge seisin of the Heriot.

Seisin of heriot alledged.

And if he doth avow for Heriot Custome, he must recite the custome in his advowry. 6.E. 3. And in advowry for a Heriot, if the Lord doth say, that he and his Ancestors have beene seised time out of minde, &c. yet he must shew a speciall seisin in him or in one of his Ancestors, and say by whose hands the seisin was.

Seisin of Heriot.

If the Lord prescribeth in him and his Ancestors, &c. to have beene the best beast for Heriot upon every surrender of his Tenant, If he taketh a Horse, &c. he must take heed that the property of the Horse was in his Tenant, and not in a stranger: Or else the stranger will punish him in an action of trespassse. 3.H. 6. fo. 45.

The property of the beast must be in the Tenant.

And where the Parson of a Church must have a Mortuary of a man holding his Land heriotable.

Mortuary.

The Lord cannot prescribe to distraine for Heriot custome, although it is conveyed away, because he may have his action of detinue, because the Law adjudgeth a possession in him, therefore he may presently seise the same, and in whose hands and possession the Heriot is, although it is sold in any Market, except it is in an open Market, without covin, he may seise the same, or have his action of Detinue. 8.H. 7. fo. 10. & 13.

Distraine.

Seisure for any heriot.

If a Copiholder being sicke in his bed doth surrender

Heriot of every alienation.

surrender into the hands of two Tenants, &c. to the use of his eldest Sonne in fee, and dieth before the surrender is presented in Court, the Lord must have an Heriot.

Custome.

But if the surrender had beene presented in Court, and the same had bin admitted accordingly, and the Father dieth after, the Lord shall have no heriot, except the custome is to have a heriot at every alienation, and alteration or Exchange.

No Heriot to the Lord.

And if a heriot be due unto the Lord upon every descent only & a surrender is made by a Copiholder unto the use of his heire in full Court, and to his heires, and the eldest Son is admitted Tenant accordingly, and after the Father dieth, the Lord shall have no heriot.

Heriot seised out of the Lords fee.

And the Lord may have his action of trespassse, for taking away a heriot within his fee, or without his fee, and he may seise him being out of his Seigniorie, for it is not within the compasse of the Statute which commandeth the Lord to distrain within his fee for his service. 19. R. 2. *Abridgement Fitz. fo. 54. titulo. 5.*

Advowry for Heriot.

If in a *Replegiare* the defendant doth avow, that the tenants for terme of life have used to pay after their decease a heriot, This avowry was not good, for it was repugnant and impertinent that they should pay a heriot after their deaths, But if the defendant in his advowry, had said that he & all these whose state he now hath, &c. hath had an heriot after the death of every tenant; This advowry had been good, if it had been of heriot custome, for if it had been for heriot service, it were not good for the

Distresse for Heriot Custome.
Heriot service.

the advowry, for that must bee against Tenants in Fee simple. *Hil. 21. H. 7. fo. 13. & 15.*

Seisin of Rent is not seisin of services as of fealtie, &c. *per Cur. Trin. 27. H. 8. fo. 20.*

Seisin of Rent,
not Seisin of
Services.

For in a Replegiare the Defendant made Conisance as Bailiffe to the Lord C. D. for rent behinde, and alledged the place, &c. to be holden of the Lord by fealtie and certaine rent, of which service the Father of the Lord was seised by hands of the plaintiffe as of his very Tenant, and thereby within his Fee and Seigniorie, the Tenant pleadeth *Hors de son fee.*

And upon this they were at issue, a Deed bearing date time out of a minde, but hee could not prove seisin of the service, as Fealtie, &c. and *Fitz-Herbert* Justice & *curia*, said that the old deed was no sufficient Evidence to prove a Seigniorie, for it is cleare that seisin of Rent is not seisin of services. *Trin. 27. H. 8. fo. 27.*

And in distreining of Cattel six things are diligently to be observed, that is, very Lord, and very Tenant, services behinde, the day of Distresse, Seisin of the suite, and entring into his fee.

Observations
in Distresses.

A man is not very Tenant untill he hath attourned to doe some service.

Attournment.

And if a man will make a Dowrie for some services, he must alledge seisin for them. *Hil. 13. H. 7. fo. 15.*

Seisin of service.

If a man justifie in an action of trespassse, or advoweth for Rent, hee is compelled to shew after what manner it was given him; and if a man will make himselfe a title of Reversion of land made to him.

The Deed
shewed.

him, he must shew a Deed thereof, *Mich. 12. H. 7. fo. 12. Ch. 7. fo. 10.*

In a Replegiare they were at issue, and when the Jury was returned to give their verdict, the plaintife was non-suite, and the plaintife prayed *Retourne irreplegiab.*

A retourne of
Cattle irreple-
giable.

But the Court would not grant it, but a retourne *habendo*, but if he be non-suite after a Verdict or after a Demurre upon matter in Law and adjudged, &c. the Defendant shall have a Retourne of the Cattell irreplegiable. *per Cur. Mich. 14. H. 7. fo. 6.*

Answer to the
tenure.

In a Replegiare if the Lord himselfe maketh Avowrie for distreyning of Cattell, the plaintife cannot say that the Lord himselfe distreyned of his owne wrong, but hee must answer to the tenure.

But if a stranger upon a Distresse doe make Conisance, as a Bailiffe, &c. the plaintife may pleade that he distreyned *de son tort demesne*, that is, of his owne wrong. *Mich. 16. H. 7. fo. 3.*

In a Replegiare the plaintife is non-suite, and a *Retorna habendo* awarded, which was returned, *averia elongata sunt*, whereupon a Withernam was awarded to have other Cattle to be delivered, yet adjudged *per Cur.* that the second deliverance shall be the first. *Trin. 36. H. 8. fo. 59.*

Propertie.
Pound.

A man distraining Cattell he hath no propertie but the Pound is an indifferent place for both parties, and the owner of the Cattle is but restrained from his libertie untill hee hath paid his rent, but if they be taken out of the Pound, the Lord cannot have an action of Trespasse, but an action

De

De parco facto, and the owner may have his action of Trespasse, for the propertie is in him. *Mich. 36. H. 7. fo. 7.*

Lands are lyable to a Distresse for issues against him that shall purchase the same land which were charged by Feoffor before his Alienation and sale thereof made. *Mich. 12. H. 7. fo. 4.*

Distresse for issues.

In Advowrie and Replegiare the Lord cannot recover propertie for his services, for when hee hath judgement to have the Retourn of the Cattle, the Cattle are but as a pledge for his Rents. *Trin. 13. H. 7. fo. 29. in Disclaimer.*

In a Distresse Cattle are but a pledge.

If a man taketh and impoundeth, a Replevin may be of more Cattle then were impounded, for if a man distreine Cowes or Ewes, &c. and they have in the Pound Calves or Lambs, the Plaintife shall have a Replevin for them all, and *per Littleton* it was adjudged. *Mich. 8. E. 3.*

Replevin of Cow and Calfe Calved in the Pound,

That if a man distreinet and impoundeth a Sow great with Pigs in the Pound, the owner shall have a Replevin for the Sow and the Pigs.

And the Sheriffe upon complaint made to him upon taking of Cattle may command his Bayliffe by word to make a Replevin of them, and it is as good as though hee had made his precept therefore to his Bayliffe. *Fitz. 6. 9.*

A Plaint was made in the Countie, betweene certaine persons Plaintiffes, and certaine persons Defendants, and it was removed from thence into the Kings Bench by a Recordare, and there they would have declared severally, the one for taking two beasts, and an other for taking of foure,

Plaints in the County removed by a Recordare.

four, &c. and because the Retourne was but for one quarrell and joynt, they would not sever, but otherwise it is if the Commencement of the first plaints had beene severall. *Mich. 3. H. 7. fo. 14.*

Avowry for
service, rent, and
to reape Corn.

In a Replegiare the plaintiffe supposeth the taking of the Cattle to bee in Dunmow, and the Defendant doth avow the taking, &c. by reason that the place where the Distresse was, &c. is a house called *Martins*, the which the plaintiffe did hold of the Defendant by Homage fealtie 10. s. rent payable, &c. and to send one man, &c. one day, &c. to reape his Corne when he was required, adjudged a good advowrie, *per Cur.*

Suite reall.

And a diversitie taken betweene suite reall and other suite, for in suite reall as a Law day he cannot be distrained for the suite but amerced, and for this amercement he may distraine.

Amercement.

Distresse for
suite of Court.

But if I be seised of a Mannor whereof a man holdeth land of mee by fealtie and suite to my Court, and if he maketh default, I may distraine him to make me recompence for not making of his suite.

Sufficient a-
mends offered.

And if the Cattle of a man doe come into my land doing me harme, I may distraine them, and if I refuse sufficient amercements to me tendred by him for my harmes, I doe him wrong for refusing.

A Distresse of
a thing in
which I have
right.

And where I distraine for a thing which I am and have right to have the same thing, and where I am not to have the same thing, there is a difference betweene, *Fineux* chiefe Justice: for in the first case if I doe distraine for rent or for homage the

the distresse is good, and it is not in the discretion of the Judges or Justices to award me the value, because I am to have the same things.

Where I am
not to have

But where I am to have the same thing by reason of my Distresse, that shall bee valued by the discretion of the Court, as if I distraine for suite or for a man should plough my land, this distresse is good, and the damages which I have sustained hereby must be measured by the discretion of the Justices; and *per Dover Justice* for not making suite unto the Court, and not reaping the Corne, is in a manner damage wherein he may distraine; he may distraine wel as is before of suite of Court, for hee cannot have the same things when the time is passed; and therefore for not making and doing of these things I shall have damages, for the which damages I may distraine, *per Cur. Hil. 9.H.7.fo.22.* The Plaintiffe did traverse the request.

Damages di-
strained.

And if a man prescribe to have a Law-day, &c. and if a tenant make default for which he is amerced, he may prescribe to distraine for his amercement, for Distresse is incident to amercement, *per Cur. Hil. 9.H.7.fo.21.*

Prescribe to
distraine.

If the Defendant doe justifie the taking of Cattle, damage feasant, the Plaintiffe cannot say that he tendered to him sufficient amends which he refuseth, except he shew the quantity of the money offered, *per Brian Justice. Hil. 10. H.7.fo.17.*

Sufficient a-
mends, the
quantity of the
money offered.

If a man distraine wrongfully, the owner of the beasts may make rescous. *9.E.3.fo.35.*

Distresse re-
scous.

But it was agreed, 4. E. 6. if the Cattle bee

Distresse of a
dead thing.

distraigned and impounded hee cannot have them out, for they are in the custodie of the Law.

If I distraigne a dead thing I may impound it where I list, but if it be corrupted by any default I must answer it. *4.E.4.fo.2.*

Rescous.

If a man distraينeth for Rent services or for damage feasant, and will impound them, and another doth rescue them; and if a Collector or subcollector for the fifteenth, or Bayliffe, Sheriffe, or any other Officer distraينeth for the King and Rescous is made, they shall have writ of Rescous and not the King.

Distresse for
the King.

But if a Bayliffe of a libertie distraينeth for the King and Rescous is made, the Lord of the Libertie shall have the Rescous writ.

And if the Bayliffe or Officer of a common person distraينeth and rescous is made, he which procured the writ of Distresse shall have a writ of Rescous. *Fitzh. 107.*

Rescous com-
mitted to the
Fleete.

If divers men do appeare by a *Cepi Corpus* upon a returne of a writ of Rescous, they shall bee presently committed to the Fleete; and it is not materiall to use addition of their names in a writ of Rescous, but onely of the Rescuers although proces of *Visagariis* lyeth against them. *Plas. 13. H.7.fo.21.*

Rescous da-
mage.

And in a writ of Rescous the Plaintiffe shall not recover damages, having regard unto the arrearages of rent, but by reason of disturbance, and the like Law is of an assault made to any person. *Trin. 16. H.7.fo.21.*

Rescous ser-
vant.

And if a man doe send his servant to distraigne
for

for Rent service or damage feasant, and Rescous is made against the servant, the Master shall have a writ of Rescous and not the servant, for the wrong is made against the Master. *Fitz-Herb.* 107. fol. 1.

And if the Bailiffes or Officers attach other persons, and other men will take them from the Bailiffes, &c. Or if hee which is arrested or attached will make Rescous, or if a man is in execution, and the writ of Capias, &c. is directed to the Sheriffe to take him, and the Sheriffe maketh his precept to the Bailiffe of the Baili: &c. where the partie remaineth to arrest him, and the Bailiffe doth arrest him, and he is rescowed by other persons and taken from the Bailiffe, hee which sueth shall have a writ of Rescous against them, yet the opinion of some was, that the Bailiffe in his owne name should have the Writ of Rescous. *Fitz-Herb.* 102. B.

Rescous of a man arrested.

Rescous is not but where the Bailiffe hath the possession, &c. and then is taken from him, for if a Bailiffe cometh to attach a man, or to distraine, &c. and is disturbed, he cannot have a writ of Rescous, but an action on the Case. *Fitz-Herb.* 102. F. G.

Rescous, action on the case.

A Replegiare is where the Lord doth distraine the cause of his Tenants for such service or Rents, but a distresse of Cattell must not be driven out of the Hundred, rape, or wapentake, except it bee a Pound overt within the said Shire, not above three Miles distant from the place where the Distresse is taken, and that the Distresse shall not be

Distresse, how and where it is impounded.

Three miles distant.

Not in severall places. and impounded in severall places, upon paine of 5.l. and treble damages, being Cattell, or goods, and for pounding but 4. pence, upon paine of 5.l. and the Sheriffe shall appoint any Deputies which shall make Replevins upon paine. *Stat. 1. & 2. Phil. & Mar.*

A Distresse in severall Pounds. Action upon the second branch of 1. & 2. *Phil. & Mar.* of impounding an intire Distresse in severall pounds, the place where the distresse was taken was thought not materiall, nor yet the place alledged in an action of Trespasse of goods taken away.

The place of taking. But two Justices of a contrarie opinion; but upon the first branch the place is materiall, because the distance of the place is materiall. *Dyer 2. 3. 8.* because it is offence.

Driving of Cattell, Distresse into forraine Shire. Action upon the Stat. of 1. & 2. *Ph. & Mar.* for driving or leading a Distresse into a forraine Shire, which Statute doth give 5.l. and treble damages, adjudged that the plaintiffe should have no Judgement of costs, although they were assessed by the Jurie. *Hil. 12. Eliz. Dyer 177.*

No Distresse of Shocks of Corne. The Lord cannot distraine shocks of Corne for his Rent behinde of his Tenants, because hee cannot have a Replegiare of the same, nor yet a Retourne thereof because of the incertainty, and so it is if a man distraine money it is not good except it be in a bag.

but for Damage feasant. But for damage feasant Shocks of Corne may be distrained. *per Cur. Mich. 21. H. 7. fo. 40.*

Pound. And if I distraine my Tenant in Fee, or my Tenant for life or for yeares for rent behinde, I cannot

not.

not make a pound in the same land wherein I distrained.

But if I distraine in my owne ground cattle, damage feasant, I may make a pound in the same ground or land wherein I distrained, to impound them, *per Cur. Mich. 21. H. 7. fo. 40.* Pound for damage feasant.

If cattle be distrained the owner ought to take notice, and knowledge of the pound, for if they dye for want of sustenance, the owner hath no remedy, *Mich. 5. H. 7. fo. 9.*

And therefore they must be impounded in a Pound overt, that the owner may give them sustenance. Pound overt.

Otherwise if they be impounded in a close house, or secret place, and doe perish for want of food, the distrainor must pay for them. *33. H. 8. titulo Distresse. 66.* Cattle dying for lacke of mear.

If the Cattles, or Goods of a man be distrained, and Sheriffe upon a *Replegiare* doe retourne, that the Chattels or goods, *sunt elongata*, that is, impounded where he cannot see them, &c. then the owner of the goods or Cattle so distrained shall have a writ called *Withernam*, which is a command made to the Sheriffe to take as much Cattle of him that did distraine, and keepe them in his owne hands untill the Sheriffe may Replevie the Cattle first distrained. Withernam.

And upon a *Withernam* retourned in the Kings Bench or into the Common Pleas that the party hath nothing, &c. a *Capias* shall proceed against him & an Exigent and Proces of an Outlary, But upon a *Withernam* awarded in the County, by the Withernam Proces of outlary.

Bailiffe that he hath nothing, he never shall have Proces of outlary, but an Alias or Pluries infinit and no other remedie, *Fitz. fo. 74. C.*

Withernam in
the County.

And the Sheriffe *post querimoniam sibi faciam* may award a *Withernam* upon returne of the Bailiffe *quod averia elongata sunt*; But this must be entred at the next County. *Mich. 16. H. 7. fo. 2. per Cur.*

Replevin.

If Cattle, &c. be distrained for rent, &c. the owner, &c. must goe to the Sheriffe, to replevy them, and the Sheriffe must have the party bound in obligation to commence his action of trespassse against him that did take the cattle, in the next County Court, for the taking, &c. distraining of his cattle, and to make retourne of the same cattle to the distrainor, if he by justification or avowry doe recover.

Plaint remo-
ved by a Re-
cordare.

And when the plainte is in the County and the Replegiare sued there without Writ, then the plaintife or defendant may remove this plaint by a Recordare, out of the Chancery retournable into the Kings Bench, or common Pleas and there to be tried.

Plaint remo-
ved by a *Pone*.

But if the Replegiare be sued by a Writ out of the Chancery, then the plaintife or defendant must remove this plaint out of the County into the common Pleas, or into the Kings bench by a Writ called a (*Pone*) out of the Chancery.

Cause shewed
to remove the
Plaint.

And the plaintife may remove the suit by a *Pone*, without shewing any cause of removal.

But if the defendant will remove the plaint commenced in the County by a Replegiare sued by

by a Writ, then he must shew evidence and cause in the Writ after the Teste of the Writ: and the like Law is when the plaint is removed out of the County by a Recordare, by the plaintife, or defendant.

And if the Replegiare be sued by plaint in the Lords Court, then a Writ of *Accedas ad curiam*, shall bee directed to the Sheriffe that he goe in his owne person and record the plaint in the Court of the Lord under his Seale and foure men of the Court, and retourne the same.

Plaint removed
the Lords
court by *Accedas ad curiam*.

In an action of trespassse the defendant justified the taking 200. Sheaves of corne, damage feasant; It was adjudged a good distresse.

Shocks of corn
distraigned.

But after he thrashed the Sheaves, and thereupon adjudged a trespassse, *ab initio*, but a distresse it self was good for damage feasant finding them in his freehold; But otherwise it were if the Lord distraigned them for service, for they cannot be restored by a Replegiare by reason of the losse in shedding of the Corne. 22.E.4. fo. 47.

Damage feasant
for Rent.

Action of trespassse was brought for taking of Sheepe, and detained untill he had paid. 54.s. for the deliverance of them; And the defendant justified the distresse for reliefe, and did take, 54.s. for their meate, without that he did take the money for their deliverance, adjudged no Plea; for if the distrainor doth give the cattle meate in the pound, he cannot compell the owner of the cattle to pay for this; For distrainor is not compelled by Law to give them sustenance: and if they doe agree after the distresse upon this summe, yet this

Feeding and
meate to cattle
in pound.

is no excuse, but yet it is for their deliverance; But if they doe agree at the time of the distresse taken that he should give them meate, and that he should have 20.s. for the same, this is a good bargain. 21. *Ed. 4. fo. 53.*

Distresse, Re-
version,

If a man doe let Land for twenty yeares, and the Lessee for yeares letteth over for ten yeares rendring rent, if he granteth the Rent unto another man he cannot distraine, because he hath not the reversion of the terme, but otherwise the law is if he had granted him the reversion of the rent, note this diversity. 2. *Ed. 4. fo. 21.*

Distresse of
a rent, in Re-
version.

If a man granteth the reversion depending upon a terme rendring rent, he cannot distraine for this rent, untill the particular estate is ended, and then he may distraine for all the arrerages, yet some were of opinion, that he might distraine presently, if the cattle of the Grantee come upon the ground, yet *per Moile Justice* that he had nothing to doe with the Land untill the terme is expired. 10. *E. 4. fo. 4.*

Distresse for an
amercement.

A distresse is incident to an amercement in a law day, *per omnes Iusticiarios in cōmuni Banc. H. 7. f. 22.*

For heriot:

For distresses for heriot, looke for heriot and note well where the Land is charged upon the tenure of the Land or custome.

Distresse dri-
ven.

A man comming to distraine for rent, or services, and seeth the cattle on the ground, and the tenant driveth them away, the Lord may follow and take them, but for damage feasant the Law is otherwise clearly.

Distresse for
the fifteenth

And if a man cometh to distraine for a fifteenth given

given to the King by Parliament & seeth the cattle, and the owner perceiveth this, driveth the cattle into another parish, the Collector cannot distraine them in another parish, *per Brian Justice*, 16.E.4.f.10. driven into another parish,

And the King may distraine for rent for debt or for any thing granted to him by Parliament without cause of distresse in the same, 17.E.4.f.6.

A Seigniori and tenure of Obiit and Chantry land is extinct by the possession of the King by the Statute of *primo Ed. 6.* Chantry Land Distresse.

Nevertheless the saving in the same Statute, but the rent remaineth distrainable, and the Lord shall avowe upon the matter, but not upon the person as within his fee, and Seigniori, *Dyer 312.*

Advowry was because the land was holden of him by fealty & certaine rent and alledgeth seisin, &c. and for rent he avoweth upon the land by the Stat. of 21.H.8. But he made no mention of the Statute, *quod nota*, and thus it seemed good because it is a generall Statute. 27.H.8.f.2. Advowry upon the Statute of. 21.H.8.

Advowry upon the Statute of H.8. 21. upon the land and upon no person, the advowant ought to alledge seisin of the rent by the hands of some person although he doth not avow, or make avowry upon any person certaine, and so he did, and the plaintife alledged that a stranger was seised, &c. without making privity of him by whom seisin was alledged: That he did let it for yeares and prayed aide, and it was granted, *quod nota*, 27.H.8.f.4. Seisin of Rent alledged.

Action

No distresse of
Cattell in the
plough.

Action of trespassse was brought upon the Statute that none shall be distrained by his Cattell in the Plough, as long as any other reasonable distresse may bee had upon the land, and the Plaintiffe declareth the taking to be against the Statute, and doth not specially shew that hee had other Cattell to be distrained, yet it was adjudged good for the Defendant to alledge this, 4.E.3. & 18.E.2. And the Tenant shall have such an action against his Lord although he hath made agreement for the thing for the which the Distresse was taken, *Trin. 14. Eliz. Dyer 312.*

Distresse unlawfull.

Two had Closes adjoyning together, and the one of them hath beene used to be inclosed time out of minde, and now by the insufficiency of the Inclosure the other mans Cattell breake in, and immediately before he could rechase them they were distrained for rent, but because the Distresse was by a Termor for yeares, who had granted parcell of his terme, rendring to him Rent, and also in default in the owner, it was adjudged that the distresse was unlawfull, and liable to the distresse of the Lord, if there is not fresh suite made after them. *Mich. 15. Eliz. Dyer 317.*

If I let land for yeares rendring mee rent in some other place where the land is not, and there is no clause of Distresse in the indenture, yet I may distraine upon the land, for this doth not restraine the Law, for a Distresse doth appertaine by the Law. 44.E.3.42.

Distresse for
rent by Tenant
for terme of
yeares.

A man being Tenant for yeares granteth over all his terme rendring rent, hee cannot distraine,
but

but if he granteth parcell of his terme he may distraine. 45.E.3.fo.8.

If a man amerced in a Leete for receiving of W. as a Dozener, the Lord cannot distraine me, but by my proper goods, and not the goods of any man which are in my custodie, because the offence beginneth in my person, but otherwise it is where the offence riseth by the soile, as for rent services and damage feasant, for in these I may distraine the Cattell of any man which are in the land. 41.E.3.fo.26.

If the Lord in a Leet distraine for Amercement there offered for not appearing there, if the Tenant offer to pay the amercement, and the Lord refuseth, and after the Lord distraineth, and the Tenant doth offer it againe, and the Lord neverthelesse carrieth away the Distresse, he doth wrong, and hee shall not have retourne of the Cattell.

Distresse for
Amercement
offered in a
Leete.

And if the Tenant cometh after the Lord hath distrained, and offer his rent, and the Lord refuseth, he shall not have retourne, so that the distresse is but a Gage for the duty, which duty when it is offered the Lord must deliver the Gage.

45.E.3.3.9.

If a man distraineth and the owner of the Cattell giveth the Cattell unto the King by deed, and the Officer of the King taketh them, the Lord which distraineth them cannot take them, because they be in possession of the King. 37.H.6.per Danby Justice.

Distresse of
Cattell given
to the King.

If a man hath a Lordship or Seigniory which is

Distresse not
good against
the King.

is seised into the Kings hand by a false Office, yet the Lord cannot distraine for his Rent, because his land is in the possession of the King, although the Office is false being still in force, and the Lord in this case may traverse for his Seigniori. 44.E. 3.*fo.13. quod nota.*

Tithes in Distresse.

If a man letteth Tithes for yeares or Rents rendring rent, he cannot distraine for them but have his action of debt, for he cannot distraine the Tenths for they are the things letten. 11.H.4.*fol.40.*

Distresse by the King.

The King may distraine for rent or fee farme as well in lands not holden of him as in other lands, for the King may grant rent, rent-fee, fee farme, &c. to hold of him which no man can distraine. 44.*Assis. P.32.*

Distresse of a Cart laden with Corne.

A man distrained a Cart laden with Corne and foure horses for 2.s. rent, adjudged an excessive distresse, but otherwise, if the horse had beene harnessed and annexed unto the Cart, for then it is an intire thing and cannot bee severed.

And a Fold of Sheepe may bee distrained for 2.s. and not to be amerced for the excessivenesse thereof, for the Distrainor cannot sever them, and agreed that a Cart laden may be distrained. 22.E. 4.50. But by *Sulard* Justice, Shocks of Corne, nor money cannot be distrained because of the incertainty. 20.E.4.*fo.3.*

Distresse for a by law broken.

A man may distraine for breaking of a by law in a Leete by custome. 21.H.7.40.

If I put my Cattell to you to bee pastured for
12.d.

12.d. the weeke, and you give me warning that you will no longer pasture them for me, and I do not take them away, he may distraine them damage feasant. 43.E.3.*fo.21.*

Distresse for
Damage fea-
sant.

A man distraineth the Tenant for yeares for rent behinde, and after the Tenant is attainted of felony made before the Distresse taken *per Cur.* the King shall not have the Distresse as a thing forfeited, except hee satisfie the partie which distrained, for it was lawfully taken at the time of the taking; but the Law is otherwise where the owner distraineth the Tenant for rent, and after the tenant in Taile is attainted of felony made before the Distresse, for here the Donor may distraine the Cattel of the Tenant in taile after Execution of his Father; but in the first case he hath no other remedy.

Distresse for
rent behinde of
a Felon.

And if a man doth gage his goods and after is attainted of felony, yet the King shall not have the goods gaged without paying the summe for which they were gaged. 13.Ric.2.*fo.13.*

Good gaged,
felony.

Stuffe sent unto a Taylor, Fuller, Sheere-man, Weaver, Miller, &c. shall not be distreyned, for these Officers are necessary for the Commonwealth; and the like Law is of and in a common Inne, but such Artificers may retaine their stuffe for their wages, for their labour, and the Ostler in an Inne may retaine the horse for his meate, that is, his horse-meate not paid, and his owne victuals and Corne in Shocks and Sheaves cannot be distrained, but otherwise it is of Corne loaden in Carts. *per Rastall 22.E.4.fo.50.*

Goods not to
be distrained.
Taylor, Fuller,
Sheere-man,
Ostler in an
Inne.

He

Pound in a
Close-house.

Hee which distraineth Cattell may put them into a close house if he will give them meate, for a distresse put into a pound Overt is not but that the owner may give them meate. 33.H.8.

Pound breach.

If I distraine Cattell damage Feasant in my land for Rent service, and put them in a lawfull Pound or in any other place which is a lawfull Pound, and the Cattell be taken out of the pound, then I may have a Writ *de parco fracto* against thm. *Fitz-Herb.* 100.

Distresse of a
horse, a man ri-
ding thereon.

A man cannot distraine a horse that a man doth ride upon. *Fitz-Herb.* in Rescous. 11. *quod nota.*

Pound breach.

And if my servant distraineth for me, &c. and putteth the Cattell in pound, and the Cattell are taken out of pound, &c. I shall have an action *Parco fracto* against them, and not my servant, for it is my pound.

Pound breach.

And if I distraine for rent service or for damage feasant, I may impound them in the Close or ground of my friend, if he will give me licence; and if the owner of the Cattell will take the Cattell out of the ground, I may bring my action *de parco fracto*, and not the owner of the ground, but the owner of the ground may have his action of Trespasse against him. *Fitz.* 100.F.

Amercement.

And if a distresse of Cattell is impounded for Amercement in the hundred, it must be shewed and expressed in the Writ, that the propertie of the beasts taken in distresse was in him which was amerced, for other mens Cattell cannot bee distrained for this amercement, but for rent services &c.

&c. I may distraine any Cattell that I finde in the land, Levant or Couchant. *Fitz. 101.H.*

If the Lord or his Bailiffe, &c. commeth to distraine, and doth see the beasts, and the Tenant perceiving that, driveth the Cattell out of his Fee, the Lord cannot have a writ of Rescous, because he had not the possession of the Cattell, but hee may pursue them and distraine, but if they bee chased out of his fee before he doth see them hee cannot distraine them, *per Cur. 21.H.7.f.40.*

Rescous, chase
Cattell out of
Fee.

If the Cattell of any man escapeth into any land, and the Lord of whom the land is holden distreineth for rent, &c. this distresse is lawfull, and if the Tenant doe see the Lord comming to distraine, and hee chaseth the Cattell away out and from the land, yet the Lord neverthelesse the inchasement and driving away out and from the land may distraine them.

Chase Cattell.

But if the Cattell doe goe out of the land without inchasement, the Lord of whom they hold the land cannot distreine them, *per Cur. Mich. 11.H.7.f.4.* and fresh suite after his Cattell will not help. *M.7.H.7.f.1.*

Distresse by the
Lord.

And if the Cattell of any man escapeth into any land, and the Lord finding of them there distraineth them, adjudged a good distresse, but if the Tenant or owner had taken them away before the Lord had distrained them, then hee cannot distraine, but it is not materiall whether they be Levant or Couchant upon the land, for if they be upon the land 40. dayes, and the owner taketh them out of the land before the Lord, the Lord

Levant or
Couchant.

can-

cannot distraine, and if they be there upon the Land but one houre, and the Lord doth distraine them, they are lyable to the distresse, *per Cur. Pas. 10.H.7.fo.21. Mich.7.H.7.fo.1.*

Distresse,
Fresh suite.

If the Cattell of a Stranger commeth into my land which I hold by Rent service, and the stranger doth make fresh suite to take them out of the ground, yet the Lord of whom the land is holden may distraine the Cattell of the Stranger for my Rent service although they be not Levant or Couchant there, and the fresh suite is not materiall because he had no authority to have the Cattel there, *per Cur.*

Goods in an
Inne or Mar-
ket not distrai-
nable.

But if a man doth come into a common Inne his goods and beasts shall not be distrained there, because then it would be prejudiciall to the Common-wealth.

And also goods and Cattels brought into a Faire or Market to be sold shal not be distrained, *per Cur. Mich.7.H.fo.15. 10.H.7.fo.21.*

Garments in a
Shop.

The garment or the cloth in a Taylors shop to make apparell for a man shall not be distrained. *22.E.4.fo.49. 10.H.7.fo.21.*

Millstone not
distrainable.

A Miller lifteth up the Millstone, and layeth it upon the Hurst to be beaten and picked upon the floare, and thus severed from the Mill, is parcell of the Mill, and cannot be distrained. *14.H.8.29.*

Windowes,
doores, tables,
fixed posts, a
furnace, pales,
fatts fixed.

And the Lord cannot distraine of any of those things which are parcell of the Freehold, as Windowes, doores, &c. *14.H.8.fo.29.*

Tables fixed on a post, a Furnace, pales, the covering of a Bed, Timbers, doores, boards fixed,

a Furnace fixed in the midst of a house, Fatts fixed on the ground, and a Dying-house, or Brewing house, but not glasse, the Evidence of a man, because these are parcell of the freehold, therefore they cannot bee distrained nor forfeited by an outlawrie, nor Executors must not meddle with them, but if these are not used in the house but are standers by, then they may be distrained, &c. *Mich. 21. H. 7. fo. 13. Pas. 14. H. 8. fo. 25. Trin. 21. H. 7. fo. 27.* But glasse the Executors must have and not the Heire. *per Pollard Justice.*

Lord and Tenant, and the Tenant holdeth of the Lord by the rent of 3.d. the Lord distraineth for the rent of 3.d. 200. Sheepe, &c. the Tenant bringeth his Replegiare, the Lord advoweth, the Tenant being Plaintife prayeth that the Lord should be amerced for his excessive distresse, and the Court adjudged that the taking and distraining of six Sheepe had beene sufficient for so small a Rent, and therefore the Lord was amerced for his unreasonable Distresse, and the Justices opinion was that if Tenant the Plaintife bee non-suite, the Lord shall have his returne *Habendo* but of six Sheep. 200. *Mich. 41. E. 3. fo. 26. 11. H. 7. fo. 14. per Cur.*

The Lord cannot distraine shocks of Corne for his Rent, but for damagefeasant he may distraine them. 21. H. 7. fo. 41. 11. H. 7. fo. 14. For Shocks of Corne cannot be distrained for Rent behinde of his Tenant, for it cannot be Replevied nor a retourne thereof for the incertainty thereof, *per Cur.* but for damagefeasant, and they may be

Amercement
for a Distresse
excessive.

Shocks of
Corne distrai-
ned.

impounded in the same ground, *per Cur.* but for other distresse they must not bee impounded in the same land; And if a man distraineth his Tenant at will, &c. and maketh a Pound in the same land, the making of a Pound there dischargeth the Lessee, *per Keble. 21. H. 7. fo. 39. 11. H. 7. fol. 14.*

Amercement
in the Sheriffes
torne.

If a man be amerced in the Sheriffes torne for a way presented to be stopped, for such amercement the Sheriffe may distraine any mans Cattell in all the Shire, and so may a Lord doe through all his Hundred, as well out of the land as in the land. *Trin. 2. H. 4. 24.*

Distresse,
amercement
in a Leete.

But amerced in a Leete the Lord may distraine in no place within the precinct of the Leete. *8. Ric. 2. in the title of Avowrie. 192.*

Amercement
in a Leete.

If a man be amerced in a Leete, and another taketh Leather from him and maketh Shooes and Bootes thereof, yet these Bootes and Shooes may be distrained for this Amercement within the precinct of the Leete. *5. H. 7. fo. 15.*

Distresse, not
lawfull to unbar
the doores.

If a man doth come to the house of his Tenant to distraine, the doores being fast shut and barred, and with his hands through a crevice or hole did shove the barre and open the doore, and did take out of the house two Cowes in the name of a Distresse, and because hee did take a Distresse in this manner, it was adjudged the Distresse to be wrongfull, *Abridgement Fitzh. fo. 296.*

Distresse, not
lawfull to open
a Close to di-
straine.

And the Lord cannot distraine in the land of his Tenant except the Close be open, for if it be

in-

inclosed he cannot breake open the Close or field to enter thereinto or distraine, for if he doe breake the hedge, &c. to make a way to enter and distraine, he shall be punished as a Trespassor from the beginning. *Fitz. 5. H. 7. fo. 11.* But if the Lord doth breake open the Close, and the next day after, or at some other time he cometh to distraine and findeth the place open which he did breake, then hee may enter through the same place and distraine, and justifie his Distresse; but there may be a time betweene the breaking of the hedge before his entrie and the Distresse. *Hil. 5. H. 7. fo. 11.*

And if the Distresse is misused by the Lord, as where he taketh the Cattell and worketh them in his Plough or Cart, or killeth them, and if he doe enter into land to distraine and felleth trees in the land which he cannot doe by reason of the Seigniorie; in these cases he shall be punished as a Trespassor, *ab initio. 5. H. 7. fo. 11.*

Distresse mis-
used.

A man may distraine for damage feasant in the night, for otherwise the Cattell may bee driven out, but for Rent service, &c. the distresse must be taken in the day, for the Law intendeth that the Tenant will bee ready in the day time upon the land to pay his rent, for he is not compelled in the night, *per Fairfax Justice. Mich. 11. H. 7. fo. 4. Pasch. 12. E. 3. & in le Abridgement fo. 296.*

Distresse in the
night.

If a paine of 10. l. be presented in a Leete to be broke, the paine shall not after be affirmed, and the Lord of the Mannor may have his Action of debt for the same, but he cannot Distraine and make advowrie for it except by prescription, 23.

Paine in Leete
presented 10. l.
cannot be affi-
red.

H. 8. tit. 37. but it is used to distraine in every Mannor.

Distresse in a
Leete for
fine.

If a man doe make any contempt in the Court, as to deny to be sworne, &c. the Steward thereupon may assesse fine upon him for which the Lord may distraine or have an action of debt, 13.6. *Abridgement in Leet*, fo. 91. 11. 10. H. 6. fo. 7. & 7. H. 6. 13.

Amercement
affired.

Whereas fine is assessed by the Lord or Steward for a contempt in Court, or where any Amercement is affired, a man cannot have any helpe by a *moderata misericordia*.

*Moderata mi-
sericordia.*

But where Amercement is not affired, if the Amercement be too great, then the Writ *de moderata misericordia* will help. *Fitz. fo. 7.*

Suite service.

For suite service a man may distraine of common right without Amercement, for the suite recall there must be Amercement and then a distresse, and so now used in every Mannor without prescription. 21. H. 7. fo. 15.

Amercement
in a Leete.

A man was amerced in a Leete for purpasture in the high way, and his Gelding being in the custodie of another was distrained therefore. 47. E. 3. fo. 12.

Distresse.

And in a Leete a man may amerce and distraine for a Nufance, &c. 8. H. 4. fo. 15. 29. E. 3. fo. 36.

And a man may prescribe for Amercement for a Law day, for it is incident. 9. H. 7. fo. 22.

Distresse sold.

The Lord of a Mannor may sell the Distresse for Amercement in a Leete, as the King may sell his distresse, for it is the Court of the King. 3. H. 7. fo. 4.

The

The Lord cannot distraine the Gelding of an other man being in the Inne or house of him that is amerced, nor the garment or cloth of another man in a Taylors Shop which is amerced. 10.H. 7.*fo.21.* And if amercement in a Leete be affired, the Lord may distraine without giving knowledge to Tenant. 43.E.3.*fo.9.*

Distresse in an Inne, Shop, &c. affired.

If a man be amerced in the Sheriffes torne, the Sheriffe may distraine him in any place within the Sheriffe, But in a Leete within the precinct of the same, *in the Abridgement in Avowry. 194. 8.R.2.*

Amercement in the Sheriffe torne.

The Master and Servant &c. dwelling within a Leete must come to the Leete because of their Resiance, *per Cur. Hil.2.H.4.fo.16.*

Leete.

The son shall not be punished for not scowring a ditch which his Father was payned to doe, nor yet the Successor of any person so payned in Court. 5.H.7.*fo.3.*

Paine.

The Lord may have an Action of debt for amercement affired in Court Baron, and the Lord may distraine in the high way for Amercement in a Leete, *Abridgement titulo Avowry 221. 7. H.7.fo.15.*

Debts for Amercement.

In a Replegiare if the Plaintife declareth that the Defendants hath and doth detaine the beasts, &c. and the Defendant appeareth and maketh after default, the Plaintife shall have Judgement to recover all in damages, as well the value of his beasts as damages for the taking, as his Costs, &c. *Mich.8.H.8.Rotulo.180.*

Damages in a Replevin.

If the Lord doth take any distraine the beasts of

Replevin against the Lord.

of his Tenants wrongfully, and after the beast retourne home to the Tenant their Master, yet the Tenant shall have a Replevin against the Lord, and recover his damages for his wrongfull detayning of his Cattell, because hee cannot have an action of trespassse against the Lord for his taking, &c. *Fitz. 69. H.*

Avowry for
Rent.

In a *Replegiare* the Defendant may avow for rent, &c. without naming any person by force of the Statute of Advowrie made 21. H. 8. *Pas. 27. H. 8. fo. 5.*

Property of
the Cattell.

In a *Replegiare* it is a good plea for the Defendant to say, that the propertie of them was *William Vales*, and not in the Plaintife, *Hil. 20. H. 6.*

Distresse by a
servant.

If I distraine for Rent service if you doe agree to it although you did not make you your Bailiffe, yet the Distresse is good, but a man cannot distrain and justifie, as servant to a Corporation, without shewing a deed of his retaining, *per Cur. Mich. 26. H. 8. fo. 8.* And the King cannot give such authority without deed.

No Replevin
against the
King.

And where the King distraineth, the beasts cannot be Replevied, *Hil. 3. H. 7. fo. 1.*

Costs and da-
mages.

If Cattle be distrained and a *Replevin* is sued, the Defendant doth avow for taking of damage feasant or for Rents customes and services, and are at issue, and after the plaintife is non-suite or otherwise barred, hee shall lose his costs and damages *per Stat. 7. H. 6. ca. 5.* but *per Stat. 21. H. 8.* it is cleare, *Pas. 14. Marie Dier 141.*

A Writ of in-
quiry of dama-
ges.

And in a second Deliverance the Defendant
said

said that the propertie of the Cattell was in the Stranger and to have the retourne of the Cattell; he avowed for Rent service, and the Plaintife was non-suite, whereupon a retourne irreplegiabie was awarded and a Writ to inquire of damages, *per Statut.*

In a *Replegiare* the Plaintife is non-suite, and the Defendant hath retourne, &c. The Plaintife hath a second deliverance and is againe non-suite, and so a Retourne irreplegiabie was awarded, &c. divers opinions, &c. that no avowrie, and some that avowrie should bee made shewing the certaintie of, &c. and to have a Writ to inquire of damages; others of opinion that the Cattell should bee detained untill amends was proffered for the damages, others whether the Cattell might be wrought or not, being distrained, but fully agreed that the Cattell may bee put into a Pound overt againe, he may take a new Distresse if the Cattell in the Pound doe dye for the first cause, *Mich. 11. Eliz. 280.*

Pound overt.
Cattell dying
in Pound.

No Cattell, or any Cattell distrained for the Kings debt, nor for any other thing, shall be sold or given within fifteene dayes after the taking thereof, *5 I. H. 3.*

Distresse sold.

The Lord of a Mannor may sell the Distresse taken for Amercement in a Leete, as the King may sell the Distress because it is the Kings Court. *3. H. 7. fo. 4.*

Distresse sold.

Collectors appointed for to gather money towards the repairing of Bridges decayed, may distraine any person that shall bee taxed and refuse

Distresse sold.

to pay for the same and sell them. *22. H. 8. fo. 5.*

Distresse sold.

Church-wardens of every parish, &c. may distraine the goods of every parishioner, which is assessed to pay money for the destruction of Crows, and other vermine, and upon not paying, or refusing, they may sell the distresse, as is used in selling amercement in a Leet, *Stat. 8. Eliz. c. 15.*

Distresse sold.

Every Receiver, Bailiffe, and Collector of the King his Lands, &c. for lacke of payment of the Rents, issues, and profits, within their Offices, may distraine and sell the distresse, *Stat. 7. E. 6. c. 1.*

Distresse sold.

And Collectors appointed for the gathering of mony taxed in several Shires towards the making of the Gaole in the same Shire, may distraine, &c. any person taxed, refusing to pay, and after tenne dayes to sell the distresse. *Stat. 23. H. 8. 2. Eliz. cap. 25.*

Distresse sold.

The Surveiours of wayes in every parish, may levy the forfeitures by distresse and sell them. *18. Eliz. cap. 9.*

Goods sold.

And the Collectors for the poore, may seise and sell the goods of him, which bringeth into England, or into Wales any vagabond begger out of Ireland, or the Isle of Man, for 20. s. which hee hath forfeited to the use of the poore of the parish where any such persons were set on land. *14. Eliz. cap. 5.*

Distresse sold.

And all forfeitures, made by the reason of the *Stat. 14. Eliz. cap. 5. and 18. Eliz.* for setting the poore on worke, & for the avoiding of idlenesse, shall be levied by distresse, and sale made of the goods of the offender to the value forfeited, *18. Eliz. cap. 8.*

Execu.

Executors and Administrators may distraine for Rent due unto the Testator, and husbands after the death of their wives, may distraine for rent, that they had in the right of their wives, and for the arrerages of the same avowe, &c. And a man, &c. may distraine for rent, the estate whereof depending upon anothers life being dead, Stat. 32. H. 8. cap. 37.

Distresse for Rent by Executors, or Administrators.

Attachment, and Distresse.

IF the Sheriffe doe Attach a Cow, or an Oxe for the appearance of a man at *Westminster*, the property of them is not out of the defendant, untill he hath made default, And if the Sheriffe attach the Cow, &c. and leaveth the Cow with the defendant, yet if he maketh default at the day his appearance, the Cow is forfeited, and the Sheriffe may take it, and he might have taken it at first, if he would. *per Cur. 9. H. 7. fo. 6.*

Attachment of goods.

Forfeit for not appearing.

But if the defendant is retourned, attached by the Sheriffe, by such chattells, &c. in a Writ of attachment in an action of debt, &c. And at or before the day of his appearance he is essoined, & at the day of essoine adjourned; The defendant maketh default, yet the goods attached are not forfeited, neverthelesse his default after, *per Cur.* But yet if he had default the day of the attachmēt retourned, the goods had beene cleane forfeited, *per Cur. 21. Ed. 4. fo. 78.*

And not forfeited by an Essoine, cast at the day of his appearance.

And if the defendant doe appeare at the day of attach-

Essoine cast
is a delay for
the defendant
did essoine.

attachment or at the day of the essoine adjourned, he shall save the attachment; And the defendant may have a Writ directed to the Sheriffe to deliver the goods, and that there is no forfeiture by default of the day of the essoine. *34.H.6.fo.29.*

If a plaint was in a Court Baron, and the defendant was summoned & made default, and after he was attached by a cow to appeare, & made default at the day of attachment, whereby the Cow was forfeited unto the Lord of the Mannor: *28.H.6.fo.9 per three Justices*, but five Justices contrary, *Trin. 37.H.6.* that the goods shall not be forfeited, but upon attachment out of a Court of Record. And by the *32.H.6.* the attachment was forfeited, and it is agreed there, that it is forfeited, before the Sheriffe, or in a Justice, And therefore, it seemeth it is a forfeiture for the Court of the Sheriffe is but a Court Baron. *34.H.6.fo.49.*

A Gelding
which a man
rideth on can-
not be distrain-
ed.

In an action of debt, trespassse, &c. a man must not attach the defendant by the Horse which hee rideth upon, if he hath other goods wherewith an attachment may be made; But so it seemeth, That if he hath no other goods, but the Horse which he rideth on, the Officer may attach him. *Fitz.nat.bre.93.H.1.* for if he doe attourne the case is against him.

What goods
must be atta-
ched,

And no goods shall be attached, but the proper goods of the party, and not the pledges, nor yet borrowed goods, *35.H.6.fo.25. per Moyle Justice*, And it is not of Chattells reall as a lease for years, nor of apparell. *7.H.6.9.*

In assize the defendant pleaded that he was not
attached

attached by fifteene dayes, and plaintife examined, who said that he was attached by the Gleabland such a day, which with the day of Assize made fifteen dayes, and the attachment not good, because it was not moveable goods, or by pledges, or by goods, which may be forfeited by Outlary and not of land which is freehold, which is glebe, and therefore ought to be fifteene dayes, before the assize, beside the day of assize, and therefore a new attachment was awarded. 27. H. 6. fo. 2. Fitzh. 14.

Attachment not good, but of his owne goods.

If the Sheriffe attache a man by his goods, he must retourne the certainty of them, and the value of goods: And it is not sufficient retourne, that he hath attached goods of the value of tenne pounds, for the goods are forfeited, if he make default at the day of the retourne. Dyer 199.

A woman shall be attached by the goods of her husband. 7. H. 6. fo. 9.

Attachment must be fifteene dayes before the day of Assize, &c. 22. Assize. P. 19.

Attachment by the servant of the Bailiffe is good. 27. Assize. 6. 7.

Rescous was retourned, and attachment was awarded against them, which made the rescous, to answer the contempt. 35. E. 3. 9.

If the Lord commeth to distraine for rent, or services, and the Tenant perceiveth that, driveth the Cattle out of the Seigniorie, the Lord cannot have a Writ of rescous, because he never had possession of the cattle, although he did see the beasts, But he may ensue them and distrain them. per Cur. 21. H. 7. fo. 40.

Distresse insured by the Lord.

Pound overt,
quick Cattell
distrained, dead
Cattell distrain-
ed.

If a man take quick Cattell as a distresse hee must put them into a Pound overt, so that the owner may give them sustenance, but if a man distraineth dead Cattels a Pound where hee pleaseth is good and allowable for them, but if they be corrupted or spoyled by his default, he must answer for them.

Cattell restrai-
ned, returne
home.

And if a man distraineth Cattell, and they of their owne accord come home againe to the Owner, hee which distrained them cannot take them againe by reason of the first Distresse, except hee doth freshly follow them, *per Danby Justice*, because of the negligence of the Distrainour, 9.E.4. fo.2.

No distresse in
fresh pursuite.

In a *Replegiare* the Defendant advowed for Rent charge, the Plaintife said that the land where the Distress was, &c. was open into the high way, and for default of Inclosure as he was driving his Cattell in the high way, they escaped into the land, and they and he freshly pursued them, and yet the Defendant did take them and distrained them; And *per Brian Justice*, that upon fresh pursuite the partie cannot distraine, but otherwise it is if he suffer the Cattell to remaine there after the escape there, *per Brian and Chock Justices*, 15. H. 17. fo. 17.

Distresse for
the King for
debt.

The King may distraine for his debt, and may make levie of the debt which the debtor oweth him by distraining the Tenants of the Debtor, and may take their rents which shall bee a good barre for them against the Debtor of the King their Lord, if he distraineth or bringeth his action of debt

debt against his Tenants for their Rents which the King hath received, 21.H.7.*fo.*12.

The King cannot distraine for the debt of her husband of the Dower which the wife holdeth, nor in the land which is her inheritance, nor where she is joynt purchaser of land with her husband; but where the husband was indebted unto the King before the Coverture, there the King may distraine in the land where the wife is endowed, nor any Cattell, nor any other Distress taken for the King shall bee given or sold within fifteene dayes after the taking thereof.

Distresse by
the King

not sold in fif-
teene dayes.

The Lord of a Leete may sell a Distresse, for it is a preheminance that goeth with the Leete, *per Fairfax Justice*, 3.H.7.*fo.*4.

Distresse in a
Leete sold;

And a Rent reserved upon a Lease for terme of life may be put in execution by an *Elegit*, and the Plaintife which recovereth may distraine for this Rent, he hath no Reversion, 13.H.4.3.H.7.*fo.*4. & 13.H.4.

Distresse for
rent in execu-
tion.

I have a Rent charge issuing out of land and the King is intituled unto the land by an office found, in this Case I cannot distraine upon the possession of the King, but if the King doth grant over the land by Patent, then I may distraine, for I am not out of possession of the Rent, but hee which pretendeth title to the land is out of the possession of the land by the office: note the diversity, 21.H.7.*fo.*1.

Distresse over
the possession
of the King.

A man cannot distraine of common right in any land for Rent, but in such land where the rent is issuing, but if the Tenant doe grant to me, that if

Distresse for
rent.

I be not paid my Rent, &c. that then I may distraine in other lands of his, this grant is good and no new rent, *per Cur. 9. H. 6. fo. 9.*

No distresse
for rent.

Land is demised for yeares rendring Rent, the Rent is behinde unpaid, the terme is expired, hee cannot distraine for this rent, but must recover this rent by Action, *per Cur. 14. H. 3. 1.*

Distresse not
good fresh
suite.

If I put my Cattell into my owne Close and they escape into the close of an other man not adjoining thereunto, and I freshlie pursue them and take them, the Lord in this case cannot distraine them, but the other may have an action of trespassse for the taking, *per Cur. 22. H. 6. fo. 37.*

Distresse, only
a pledge.

If a man distraineth for rent and the Cattell are Replevied, and the Retourne of the Cattell is adjudged to the Distrainor, yet this is no payment of the Rent, but onely a pledge untill he be satisfied of the Rent, for if the Cattell doe dye in the Pound he may distraine againe, *per Brian Justice, 15. E. 4. fo. 10.*

A Distresse was taken for the Rent of two pence, and for the Rent of nine pence, and hee distrained two Sheepe for two pence, sixteene Bullocks for nine pence, and hee was amerced twenty shillings for the excessive Distresse, *41. E. 3. fo. 26.*

A Distresse of five horse taken in a place, it was holden that for suite service the Distresse was good, but not for amercement of such Rent, but for Amercement for suite reall as a Leete, a man may not distraine them; note the diversity.

Distresse, not
excessive.

And the Distresse was but for two pence, but not

not thought to bee an excessive Distresse because they were joyned together in their harnesse in the Plough and cannot bee severed, 8.H.4. fo. 16.

But an excessive Distresse taken for homage or for Knights fees in the Parliament is tolerable, 11.H.4. fo. 2.

Distresse for
Knights ser-
vice.

*Lands given to charitable Uses good,
the Statute of 2.3.H.8.*

Gibson by his last Will and Testament in writing devised, that *A.* his Wife should have his land, &c. to her heires, upon condition that she by the advise of Counsell learned within convenient speed after his death, should give, grant, and assure all his lands, &c. for the maintenance and continuance of a Free-schoole, and Almes-houses, and Almes-men, and Women for ever, shee to have the profit during her life, bearing the charge of the Schoole; and made her Executrix and died.

Shee entred and was accordingly seised.

And seven yeares after she demised the same lands unto *B.* for forty yeares, by the making of which Lease she disabled her selfe to performe the Condition in her husbands Will, and therefore adjudged that the heire of her husband might enter and have the land.

Condition
broken.

And if a man make an estate upon Condition, if the Feoffee upon condition marry a Wife, or charge

charge the land, or bindeth him in Statute Merchant, or Staple, these bee breaking of the Condition, and the heire of the Feoffor may enter, *Littleton, fo. 83. 45. E. 3. B. 26. E. 3. 73.*

Stat. 23. H. 8.
not against
good uses.

Adjudged *per Cur.* that this devise was lawful, neverthelesse the Statute of 23. H. 8. which Statute is not against good and charitable Uses.

And this may be lawfully devised; As

Corporation.

First, to make a Corporation of them by the Letters Patents of the King, and after by Licence to assure these lands and tenements unto them; & so it is that if a man deviseth that his Executors shall not assure land by advise of Counsell learned unto any Corporation Spirituall or Temporall; this is not against Act of Parliament, because by licence it may lawfully bee done, and not otherwise.

Stat. 23. H. 8.
against gift of
land to main-
taine supersti-
tion.

And adjudged *per Cur.* that the *Stat.* of 27. H. 8. did not extend to take away good and charitable uses which doth not favour of Superstition or Superstitious uses.

But not against
charitable Uses.

For a man at this day may give Lands or Tenements unto any person or persons and their heires, for to finde a Preacher, to maintaine a Schoole for reliefe and comforting of maymed Souldiers, for the sustaining of poore people, reparations of Churches, High-ways, Causes, Pounds, and to discharge the poore Inhabitants of a Village of common charges, to make a stock for poore labourers in husbandrie, and poore Prentices, for marrying of poore Virgins, and for any such charitable Uses.

And

And good policy upon any such estate and feoffement to reserve unto the Feoffor and his heires some consideration of some small summe of money for the cause before rehearsed, *per Coke Attourney Generall, Hil. 32. Eliz. inter Page & Griffin.*

Divers Parishes and Villages not incorporated hath lands belonging to them for to defray the tax of the Village, or to repaire high wayes, or for repairing of Churches, or for sustaining the poore, or for discharge of other charges of the Parishes, and their heires upon trust and confidence to imploy the rents and profits to such good uses; and neverthelesse the Statute 23. H. 8. and adjudged that the same Statute was not against charitable Uses that doth not favour of Superstition.

Lands given to
the use of a
Parish.

The Statute of 31. H. 8. *cap. 13.* doth give the King real Seisin and possession of all Monasteries, dissolved by the Statute of 27. H. 8. and in this Statute is a saving unto all persons all their right, title, possession, interest, rents, charges, annuities, leases, services, rents seck, and all other services and suits onely excepted, by which Statute all rents and services due unto the Lord are gone and extinct.

But if any be seised of any rent or any profit to be taken out of Chaunteries, Colledges, and free Chappels, which were by Act of Parliament given to King *Ed. 6.* in the first yeare of his raigne, *chap. 14.* the Lords of these, shall not lose their Rents.

Action of Detinue.

IF a man delivereth unto me goods or Chattels, or money in a bag, and I will not redeliver the same againe to him, he shall have his Action of Detinue against me; but if a man delivereth mee money that is not in a bag nor in a Coffe or Chest to be redelivered to me, or to be delivered over to a Stranger, and I doe not deliver it againe, an action of Detinue is not lyable against me, but an action of accompt.

For an action of Detinue must be brought for things certaine, as for money in a bag, or for a Gelding, or for a hundred Sheepe, or for such like that are in certainty.

If the possession of any goods doth come into my hands by delivery of my neighbour, I am chargeable with this by force of this deliverie, for if I deliver these goods over to another man, or if the goods bee taken from mee and from my possession, yet I shall be charged therewith because they were delivered to me.

But where I happen or chance to finde goods, I am not chargeable to deliver them, but so long as when they were in my possession.

For if the same goods chance to be out of my possession lawfully before that hee that hath the right of the goods doth bring his action against me for the same goods found, I shall not be charged therewith, and therefore it is a good plea for a man to say, that if a writ of Detinue be brought against him for goods delivered, that the goods were

were not delivered to him by the Plaintife, but that he found them, and delivered them over to a Stranger before his action brought.

And in many cases, in a writ of Detinue, the baylement, that is, the delivery of the goods is traversable, but not the Trover, the finding of the goods, *Pas. 26. H. 8. fo. 13.*

Fines did lose a Hawke and I did finde it, and did sell the Hawke unto *Atkinson*, *Atkinson* sold the Hawke unto Sir *John Spencer*, who sold it unto another man; and although *Fines* did know the Hawke, he is not chargeable in an action of the Case for the finding and taking up of the Hawke, and the Plaintife must expressly shew and declare that the Hawke was tame and reclaimed, but the words in the Declaration that hee was possessed of the Hawke as of his proper goods, doth import so much, *per Southcot Justice, Dyer 30. 13 & 14. Eliz.*

If I come to the possession of goods lawfully by buying or delivery immediately by the Plaintifes, or if I after sell them or give them away, or deliver them, I nor hee which hath bought these goods, nor he unto whom these goods were delivered or given by me, we shall not be punished by action of Trespasse, but by action of Detinue; but if any will take them out of my possession of his owne wrong, I coming to the possession of the same lawfully, I shall punish him in an action of Trespasse, *per Cur. Mich. 16. H. 7. fo. 3.*

An action of Detinue is brought against me for finding of goods, I justifie for that I distrained the

said goods for rent behinde, and I demand judgement of action, and doe not answer to the Trover, adjudged a good justification, *per Cur.* and that Trover of the goods was not Traversable, 27.H.8.*fo.*22.

In an action of Detinue of divers goods taken, and declareth the value and price of every thing certaine by it selfe, and if the Inquest doe give their verdict that the Defendants doe detain these things to the damages of twenty pound in grosse, this verdict is not good, for they ought to sever the damages of every thing by it selfe, for the Plaintife must recover the thing detained, and if the thing be lost, then the value of that which is lost cannot appeare, and cannot bee except the damages be severed, 3. H. 6. *fol.*43.

If I deliver unto a man goods, and he is robbed of the same, he is excused; but *Danby* Chiefe Justice opinion was, if he received the goods to keepe as his own proper goods, if he after is robbed of them, this will excuse him, otherwise not, 9.E.4.*fo.*40.

An Action of Detinue upon a Deed was brought for thirty quarters of Wheate, price 20.l. which was found for the Plaintife, and they found the price at the time of payment when it should bee delivered unto the Plaintife at 33. s. the quarter, but at the time of the Deed made the price was but 20.s. the quarter, and the plaintife recovered the price as it was at the time when it should have beene delivered, that is to say, 33. s. the

the quarter and recovered the price of the Wheat it selfe and damages. 9.E.4. fo. 49. in Debt.

An Ostler in an Inne may retaine a Gelding in the Stable if the Master will not pay for his meate: And a Taylor may retaine a Garment untill he be paid for the making thereof: And a man may retaine his Gelding sold for 5.l. &c. untill he is paid his money, except there is agreement to be paid after. 5.E.4. fo. 2.

If a man delivereth goods unto me, and I make two Executors, and dye, and one of the Executors happeneth to have the possession of the goods, the action of Detinue must be brought against that Executor which had the possession of the said goods, for he is charged with the possession onely and not by the Bailement. 39 Ed. 3 9.

If a Gelding, &c. remaineth in a Lord-ship, or Mannor six moneths, and there taken as an Estray, the owner may recover him by an action of Detinue, if the party hath sufficient amends proffered unto him for his keeping. Pas. 44. E. 3. fol. 14.

If a man maketh a feoffment of his land by deed, the feoffee shall not have his Deeds and Evidence of the same Land; But the feoffor shall retaine them, except he doth give them to the feoffee: But the feoffee may have an action of Detinue against a stranger, which hath the Deeds that concerne this land, except he can make title to the land by the feoffor, and the heire in taile may have a Writ of Detinue against the discontinue

for the Deed intailed, by which the land was given. *Hil. 8. Edw. 4. & Hil. 7. Edw. 4. fo. 26. & Fitzh. fol. 138.*

And if a man maketh a feoffment in fee of his land, which is fee-simple land, and dieth seised, his heire shall have his Charters and evidences, that concerneth this land, and not the Executors of the father. *Fitz. fo. 138.*

If I make a lease for terme of years, and after I confirme the estate of my tenant for years in fee; the heire of my Tenant for yeares before, unto whom I confirmed his estate in fee, must have the Deede of the lease of years as well as the Deed of confirmation, because this Deed maketh the confirmation good. And so a man shall have an action of Detinue for every such Writing, or Deed, which procureth him title, as a release or such like without the which his title cannot be sure. *Fitzh. 138.*

And the heire in some case may have an action of Detinue of Charters, although he have not the land, As if a man infeoffed of land with warranty, and after I infeoffe another man of the same land with warranty, in this case my heire must have a Writ of Detinue for the Deed, by which I was infeoffed, because he may have advantage by the warranty. *Fitz. 138.*

And if Land is given to two men, and to the heires of one of them, if the tenant for life dieth, he which hath the fee, shall have a Writ of Detinue for this Deed.

And if a man giveth land by Deed in taile, and the

the Donee dieth without heire, the Donor shall have a Writ of Detinue for his part of the Indenture which the Donee hath. *Fitz. ib.*

In an action of detinue of Charters and evidences, the Defendant may plead a delivery of the Charters in another County, and that is because he cannot wage his Law, for a man cannot wage his Law in an action of detinue of Charters.

But in an action of detinue of forty quarters of Corne, the defendant may wage his Law. *Hil. 8. H. 6. & Pas. 8. Ed. 4.*

If I make a Deed, or Writing, and seale it, and deliver it to *William Vale*, upon certaine conditions: And then after such conditions performed to deliver the said Deed unto *Germin*, and after *John Germin* chanceth to have the Deed, before the conditions be performed, and against the conditions, I which made the Deed, must have an action of Detinue against *William Vale* for this Deed, for other remedy I have not. *per Cur. Mich. 9. H. 6. fo. 37.*

If a Box, or a Chest, is locked or sealed; the Executors shall not have it, but the heire; and he may recover it by Writ of Detinue: But if the Chest be open, the Executors must have it. *Mich. 3. H. 7. fo. 15.*

If my Father is disseised and dieth, I may have an action of Detinue for the Charters and Evidences of the land, although I have not the land; And the Executors shall not have this action for them. *Fitz. fo. 138.*

And if a Deed of feoffment is made unto me of lands by Deed with warranty, and after I enfeoffe another of the same Lands in fee, and doe binde me and my heires to warranty and dye, If any chanceth to have the Deed by which I was infeoffed, my heires shall have a Writ of Detinue for the same. *Paſ. 10. E. 4.*

If goods be delivered to the husband and the wife, the Writ of detinue must be brought against the husband alone, otherwise the Writ will abate. *Hil. 38. E. 3.* But of those goods which come to a woman as an Executrix which marieth an husband, the action of detinue must be brought against the husband and the wife jointly. *Trin. 39. Ed. 3.*

And a man shall have an action of Detinue against the husband and the wife for goods delivered unto the wife when she was unmarried. *Trin. 43. Ed. 3.*

Two Executors of the last Will and Testament of a Merchant in London, made partition betweene them of the goods of the Testator: And it was agreed betweene them how much goods the one should have, and how much the other; And after the one of the Executors dyed, and the other Executor did bring a Writ of Detinue to have the goods parted before it was adjudged that the partition was void in Law, and the action of Detinue good.

For one Executor cannot give the goods of the Testator to the other, for this gift is void. *Mich. 27. H. 8. fo. 21.*

And

And if the Husband and Wife bee divorced, the Wife shall have a Writ of Detinue of the goods given to her in marriage, *Mich. 34. E. 1.*

A man shall have a writ of Detinue against the Sheriffe or Bayliffe which made the Replevin and did not take sufficient pledges *de Returno habendo*; 9.H.6.40.43.

Chiefe Justices of England, that if I give or deliver a man goods to keep for mee; and he giveth them to another a stranger, or selleth them to another, &c. if the stranger doth take the goods away without Livery, I may have an action of Trespasse against him, for by the gift of Sale the propertie was not given for the taking; but if there is a delivery of the goods unto the buyer or unto him to whom they were given, I cannot have an action of Trespasse.

And if an Infant doth give or sell goods unto me and delivereth them, he cannot have an action of Trespass against me for the taking of them, but otherwise the Law is if I had taken the goods without his delivery.

But *Reade* Justice said, that if any Bayliffe of a Mannor doth give my goods to another man, if he taketh the goods without delivery, I cannot have an action of Trespasse against him for the taking, because he commeth to the possession of the goods lawfully, *Mich. 21. H. 7. fo. 39.*

Action of Detinue was brought for goods delivered unto a man to be kept at the jeopardy of the Plaintife, the Defendant pleaded, I *Bickner* of &c. did take the goods from him, *Reade* Justice said

said that this was no plea, for the Defendant may bring his action against the Taker; but *Keble* contrarie, for the Baylor shall have his action against the taker of the goods, for the property is in him, and it is concluded that if the Bayliffe to whom the goods were delivered were robbed of them, he should not be charged over, but if the goods bee taken from him by the Trespassor whom hee knoweth, the Bayliffe shall be charged herewith, for he hath his remedie over, 3.H. fo.4:

If a married woman delivered goods to mee to keep, and after her husband dieth, and she is married to me, if I dye, she cannot have an action of Detinue for the baylement of these goods unto me, for the baylement was discharged by the intermarriage betweene her and mee, but she may declare upon a Trover and so be relieved, *quod nota*, 21.H.7.fo.29.

If a Feme Covert which is a married woman doth give or deliver me a writing, if her husband die, she may have a writ of Detinue against mee, for although the baylement is void betweene the husband and the Bayliffe, yet it is good betweene the wife and the Baylie if the husband dieth and the wife surviveth, 3.H.6.fo.50.

An action of Detinue was brought for bags and writings sealed, and the Defendant saith that they were delivered to him by the Plaintife, and one *Iohn Germin* upon certaine Conditions, and that *Iohn Germin* is dead, who made no Executors, nor Administrators, nor administration committed to any, and prayeth a *Scire facias* to garnish or warne

warne the heire of *John Germin*, and the Ordinary, and he knoweth not whither the Deeds were recall or personall, and *Brian* Justice did grant his request, 14. E. 4. fo. 1.

When the Defendants in a Writ of Detinue prayeth garnishment, he is incontinently out of Court to pleade, but yet hee hath day in Court onely to deliver the thing which the Plaintife demandeth of him that the Court doth award, *Mich.* 12. H. 4. *Pole* his Case.

Action of Detinue for Charters, the Defendant saith that they were delivered to him by the Plaintife, and to one *Atkinson* which is dead, upon certaine Conditions to be performed, and then to be delivered to the Plaintife, and whether the Conditions were performed or not, the Defendant did not know, and prayeth Garnishment against *John* the sonne and the heire of *Atkinson*, because the Charters concerned Inheritance, and it was granted to him, 21. Ed. 3. fol. 44.

Action of Detinue was brought for two Charters or writings, and the Defendant prayeth Garnishment, and the *Scire facias* served against the garnished and he maketh default, in this case the Plaintife shall recover no damages, but the thing demanded against the Defendant; but if the Garnished doth appeare, and the Plaintife maketh default, the Garnished shall recover, *per Ascue* Justice, and where the Plaintife recovereth, judgement shall be of Charters demanded, and if they be burnt, &c. then he shall recover all in damages, and

and a Distresse shall issue against the Defendant to deliver the Charters or writings against the Defendant, and that *habeat liberationem* against the Garnished, 21. H. 6. fo. 35.

And the proces in the writ of Detinue is Summons attachment and distresse.

If I deliver my goods to you to keepe, and you put the goods that I deliver to you amongst your owne goods, and after you are robbed of all, you are discharged, 29. *Assise per Thorpe* Chiefe Justice.

And if a man delivereth goods unto me, and a Stranger doth take them from me, I shall have an action of Trespasse against him, for I am chargeable and answerable for the same to my Baylor, otherwise the Law is, if I am robbed of all my goods which were delivered unto me, and likewise of my goods, for in this case the Baylor of the goods to me to keepe hath no remedie for the same so robbed from me, *per Keble. 6. Ed. 4. fo. 19.*

If a man pledgeth or layeth goods to pawne, to pawne to me for money, if hee bringeth an action of Detinue against me because the property is in him, and not in me.

But if I pleade the speciall matter that if hee will deliver me my money, hee shall have his pledge or pawne, hee shall be barred, *Trin. 9. H. 7. fo. 4.*

But the opinion of the Court, *Mich. 20. H. 7. fo. 1.* was, that if a Pledge is delivered unto mee for money, that for the time I have the property there-

thereof, for if it bee taken from me I may have a generall action of Trespasse for the taking thereof.

But if I distraine Catell for rent and they bee taken from mee, I cannot have an Action of Trespasse against him, but an Action *de parco fracto*, for I have no property in them, but the property is in the owner, and hee may have an Action of Trespasse against mee, and the Pound is an indifferent place betweene us, *Mich. 20. H. 7. fo. 1.*

If the Plaintife declareth in an action of Detinue upon a Bill and doth shew it, yet the Defendant may wage his Law in this action of Detinue, for the detaining, &c. is the cause of the Action which may be discharged by matter in suite in the delivery of the goods unto the Plaintife or that the Plaintife did take the goods, *Mich. 16. H. 8. fo. 22.*

If a man doth come to the possession of goods by lawfull meanes as by buying them, or by immediate delivery from the plaintife, hee shall not bee punished as a Trespassor, nor if hee to whom he doth give or sell these goods unto, or delivereth them over, but by an action of Detinue, but if a man taketh such goods from the possession of him which commeth to him lawfully, he shall be punished in an action of Trespasse, *Mich. 16. H. 7. fo. 3. per Cur.*

Action of Detinue is not for taking of Hawkes, Hounds, Popinjays, and such other like things, which are things of pleasure, and made tame by the

the industry and labour of man, otherwise of a wilde nature, yet an action of Trespasse is lyable, and the plaintife shall recover damages for the taking, *Brudinell Justice*, 12.H.8.*fo.5.*

In an action of Detinue the Plaintife shall recover no damages, but where the things demanded cannot be redelivered, *per Cur.* that is, damages for the value of things demanded, and a recovery of damages shall be for the detaining, although the thing it selfe is recovered; and 1. *Ric. 3.fo.1.* In an action the Plaintife declareth of three Rings of gold, and certaine yards of cloth, &c. to the value of thirty pounds which is a summe in grosse, and the Defendant did pleade to all, *quod non detinet*, and the Jury did finde that he detained all to the damages of thirty pounds, if the Stuffle, &c. were not delivered, &c. or could not be delivered, and agreed, *per Justice*, that if the Defendant did offer unto the Plaintife part of the Stuffle, &c. that the plaintife was not bound to receive it, except he offereth all, and then hee may have all the damages, but if he maketh receptation of any part of the Stuffle, &c. hee hath barred himselfe from all his damages; and therefore because his declaration was of a summe in grosse, that is thirty pounds, and the Defendant pleaded generally to all, and the Jury doth give intire damages in their verdict, nor were severed in the declaration, it was adjudged by great and long Argument that the Plaintife should recover, but this Judgement was against the opinion of many, &c. for the Plaintife must declare of every particular thing

thing detained, and the price of every thing certaine, and the Jury must finde every thing detained and by it selfe, and damages severall and not in grosse, otherwise the verdict is voide, 3.H.6.*fo.* 43. But agreed *per Cur.* that tender of the Stuffles, &c. before an action attached and then refused, is a good bar, 1.E.5.*fo.* 5.

If I deliver a Gelding of the price of 5.l. &c. to be redelivered to me againe, &c. If I demand my Gelding and he refuse, &c. If I bring my action of Detinue, &c. it is a good plea for him to say that after my deliverie of the Gelding to him, that I did give him the Gelding, *per Cur.* and that the Defendant might have waged his Law against mee, and if the Defendant doth say that at the time of my deliverie of the Gelding to him, the Gelding was full of divers infirmities, as the Bots, Glaunders, &c. whereof he dyed at Dunmow, &c. such a day and such an yere before I did require him againe to be redelivered unto me, this is a good plea, and I shall have no recompence; but if I had required my Gelding before and had no delivery of him, and after hee dyeth, he must pay me the price of him, for it was his folly that he would not redeliver him to mee when I required him.

If I am bound by Obligation to pay you a 100.l. &c. and after you are outlawed, the King shall recover this Obligation against you by an action of Detinue if it be confessed, *per Brian Justice*, 4.H.7.*fo.* 17.

Action of Detinue was brought for fortie quarters

Contract *quid pro quo.*

Present pay.

ters of Wheate, and declared upon an absolute Contract, the Defendant said that the Contract was upon Condition to be paid for the Wheate when it was delivered, and that he had delivered 10. quarters of the Wheate unto the Plaintife for the which he did not presently pay him, and so the Contract void, and demanded Judgement, if action, &c.

Wager of Law.

Opinion that this was a good Traverse, and agreed that the Defendant might have waged his Law or pleaded *non detinet*, *per Pr.*

Day given to pay, upon a Contract.

Agreed *per Cur.* that a Contract is not good without present payment except there be a day of payment given, and if there is a day of payment given, the one may have an action of debt for his money, the other action of Detinue for his ware. *Hil. 28. H. 8.*

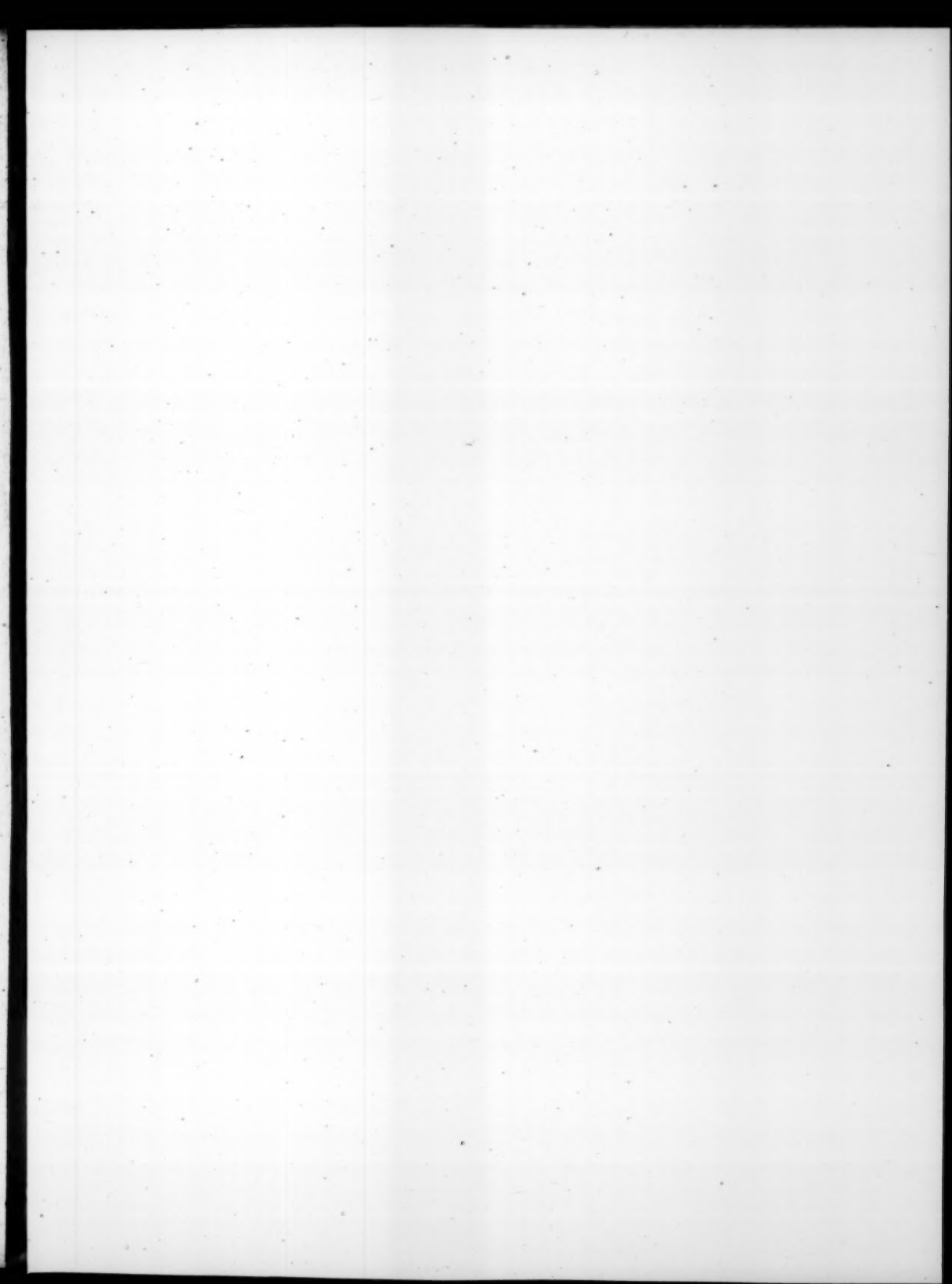
Wager of Law, Detinue.

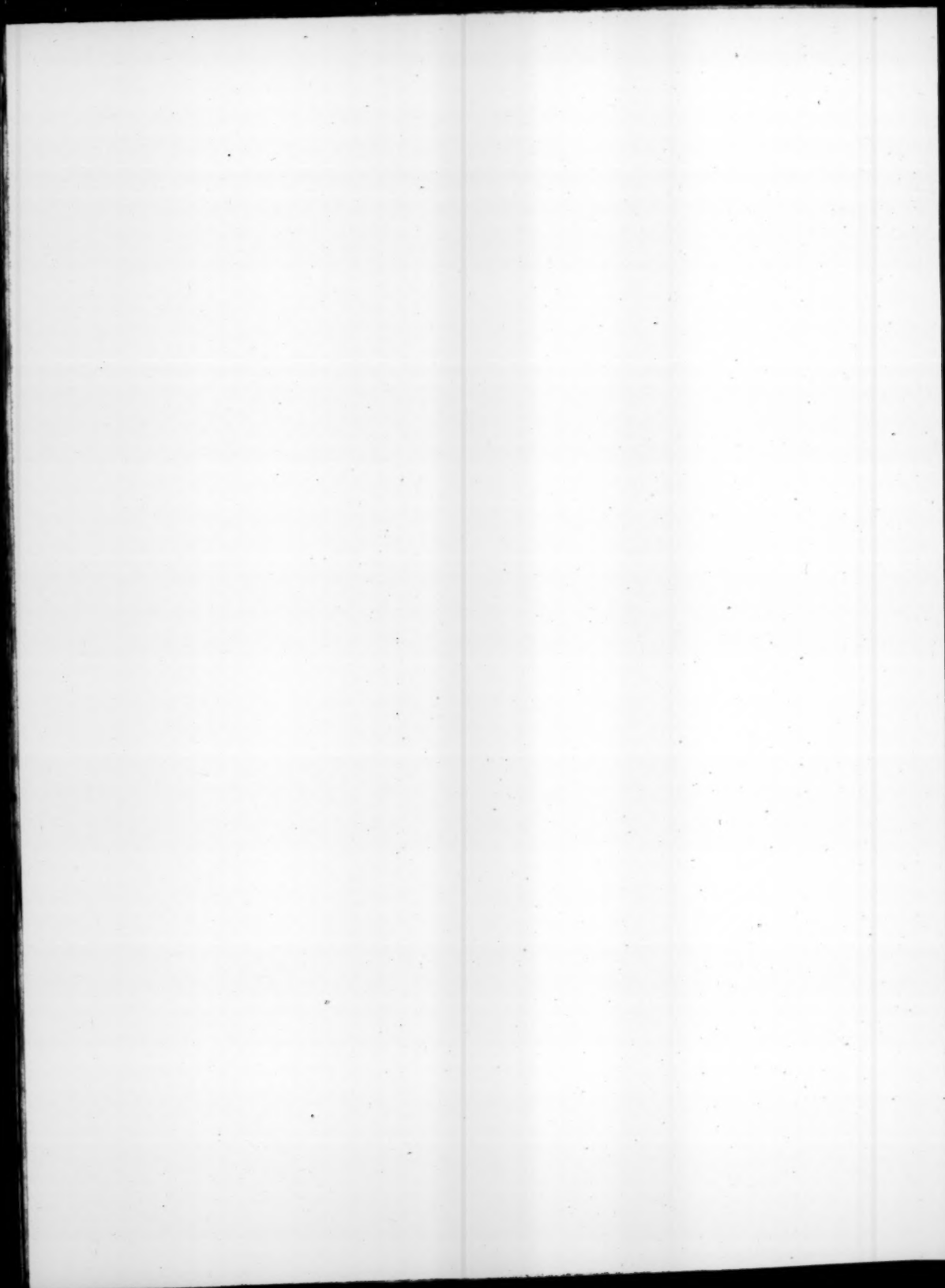
Action of Detinue brought against *Fitz.* for a chaine of gold of 3. ounces where it was but two ounces, wager of Law was permitted to *Fitz.* *Mich. 5. Eliz.*

Executors.

Executors of Tenants in Fee, in Tayle, or life, may distraine for arrerages of Rents.

EXecutors and Administrators of every Tenant in Fee, Tenant in Tayle, or for life, which hath Rent Charge, Rent Service, or fee farmes, may have an action of Debt for the arrerages of the said Rents against the Tenants of the said lands, which should pay the said rents being due unto the Testator at the time of his death,





death, and shall distraine for the same rents upon the lands that were charged therewith and with the payment of the same, *per Stat. 32. H. 8. cap. 37.*

And the like remedy hath the husband, and the Executors, and Administrators of the husband for the rents due unto their wives being not paid in the life of their wives.

The husband, or Executors, or Administrators of him may also distraine for rent due to the wife.

And for any Parson and for the Executors and Assignes of any such Parson for rents whose estate dependeth upon the life of any other man his wife being dead, *32. H. 8. 7. ca. 37.*

If I owe & am indebted unto a man in a 100.l. and he maketh me and another man Executors and dyeth, and I make my Executors and dye, my Coexecutor which survived mee cannot have an action against my Executors for this 100.l. for the Action was extinct before, for the Action could not be used before but in the name of my selfe and Coexecutor which were first, although the one of us did not Administer.

I am obliged in a 100.l. the Obligee dieth and maketh me Executor, the Action is extinct both against me and my Executors.

But if a man doe owe and is indebted to me a 100.l. and maketh me and another man Executors, and dyeth; if I doe not administer I may have my action for my 100.l. and so may my Executor have if I die, for in this Case my action is not extinct (I not administering his goods) although he made me one of his Executors, *per Cur. 20. E. 4. fo. 17.*

If a man obliges in a 100.l. and make the Obligee his Executor with an other, for that the Obligee administred not, he may sue the Administer or Executor for the 100.l. If Executors plead a Plea that tendeth to barre,

Agreed by all the Justices, that if Executors do pleade any such plea which tendeth to a bar for ever of the which they may take right knowledge

ledge thereof, if such plea is found against them, then Judgement shall be that execution shall bee had against the goods of the dead, and if there are none remaining, then of their owne proper goods.

As above said,
if there be a
false plea plea-
ded.

As if they pleade a Release or acquittance made to themselves, or if they plead that they were not Executors, nor that they did not Administer as Executors, which is found against them to be false and untrue, the Judgement shall bee that execution shall bee had of the goods of the dead, and if there be none, then of their proper goods.

If a true plea
be pleaded
when Executi-
on lieth onely
against the Te-
stators goods.

But otherwise, as if Executors doe pleade a release or acquittance made to the Testator which they finde in the Chest, or if they deny the Deed of the Testator, in these Causes because they cannot have present notice hereof, Judgement shall be that execution shall be onely of the goods of the Testator and not of their owne goods.

And if they pleade *riens intermaines*, that is, no goods remaine in their hands, or that plea *Administre & assist riens intermaines*, that they have fully Administred, and none of their goods are left in their hands; these pleas are no perpetuall barre, for if such sufficient doe happen after to come into the hands of the Executors, which are called Assets, Executors for the Debt by the Creditors.

And if the Executors pleade that they are not right named in the Writ, and that there is another Executor not named in the Writ which is living,

living, &c. which concerneth the Writ, although they may have knowledge thereof, yet Judgment shall bee that execution for payment of the debts of the Testator shall be of his owne proper goods, and not of the goods of the Executors; Note this adversity adjudged to be Law, *per Filz. & ab Instic.* 23. H. 8. & Hil. 9. H. 7. fo. 1. & 17. as followeth.

Bug, Termor of yeares deviseth his whole terme of yeares unto *Cornewall*, provided that if *Cornewall* dyed, living *John Stile*, then the residue of yeares should remaine unto *John Stile*; *Cornewall* selleth the lease and dieth; opinion of *Hales & Montague*, that *John Stile* was without remedy, *Mich. 6. E. 6.*

And a Devise of a terme of yeares for terme of life, and if he dieth before the terme of yeares expired, that then the terme of yeares should remaine unto *M.* if hee to whom the terme of yeares was first demised selleth the Lease, *M.* which is in the remainder is without remedie, *Hil. 4. Mar. R. M.* Bishop *Crammers* Case; but *Weston, Welch* and *Harper* Justices opinion, that a Remainder of a terme of yeares given by Will was good, because of the intent of the Devisor, but a Remainder of a terme of yeares, or of a Chattell executed by an estate, was cleare void, *Trin. 10. Eliz. Regina.*

Termor of yeares deviseth his terme unto his son when hee commeth to full age, and in the mean time his wife occupies the lands and taketh the profits, and maketh his wife Executrix who

sellethe the Lease, the son was without remedy,
Fitzh. Justice.

Two men had a Lease and terme of yeares as Executors, the one of the Executors granteth all his right and interest and all that appertaine unto him in the lease unto *John Long*, the whole terme of yeares passeth because every Executor hath intire authority, contrary Law is of joynt Tenants.

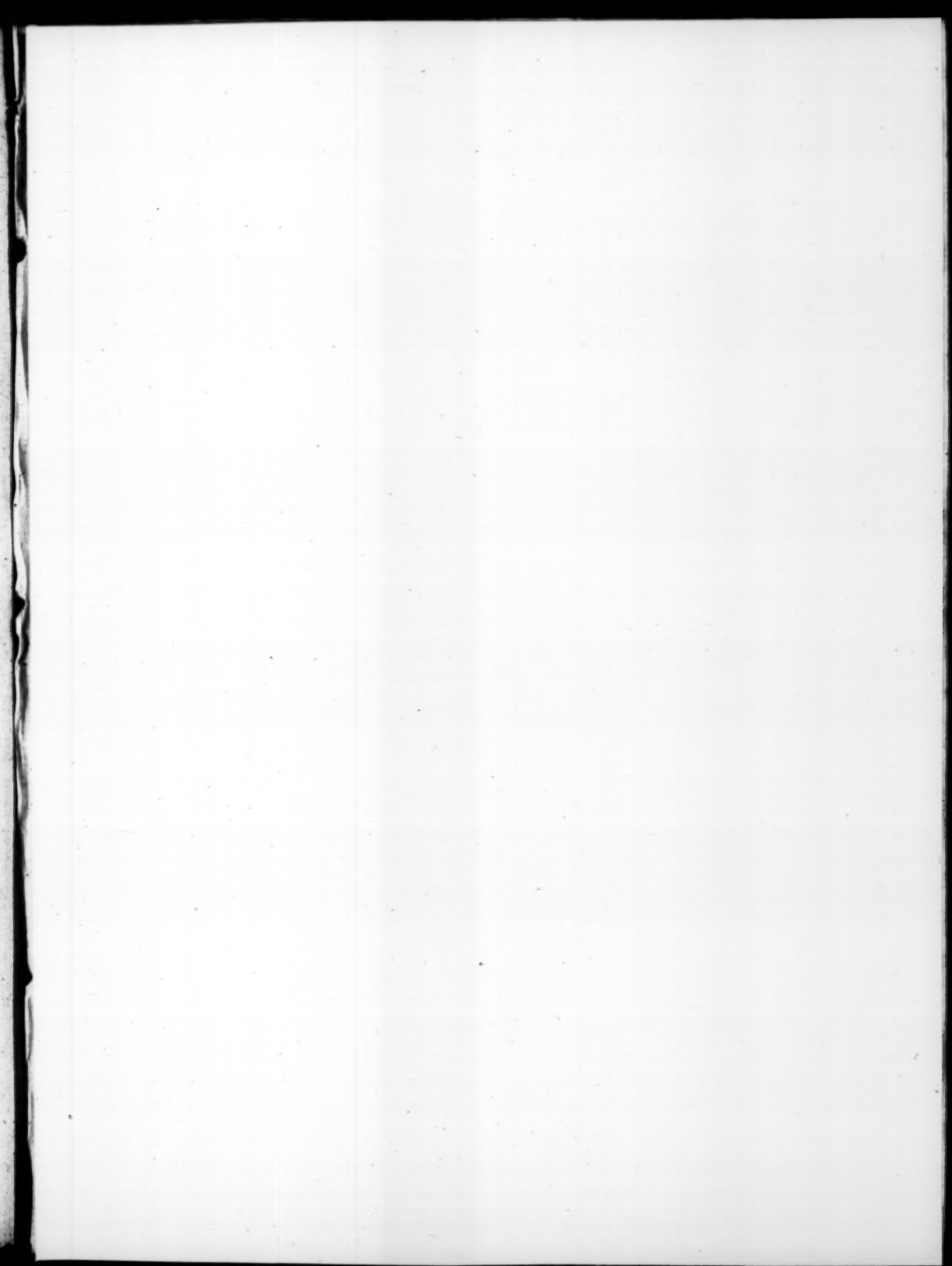
A Feoffement made to the use of him selfe, and after deviseth by his Will, that his Feoffees shall be seised to the use of his daughter *Agnes* (which in truth is a Bastard) this was adjudged a good devise of land because of the intent, for the Feoffees cannot by any possibility bee seised to their own use, and if a man willeth by his Will that his Feoffees shall make a gift in Tayle, it is a good devise of land.

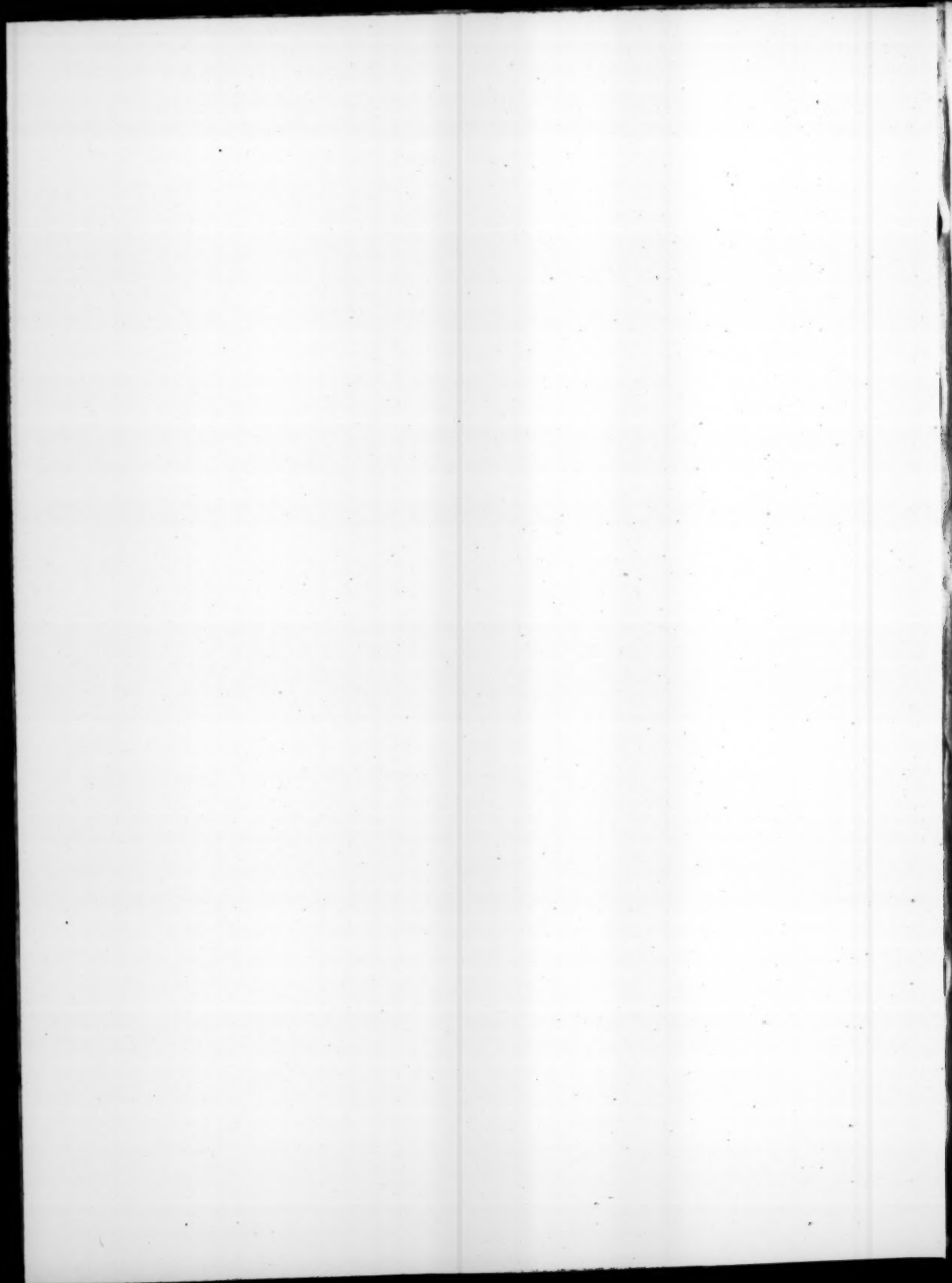
Legacies are
 onely to be re-
 covered in the
 Spiritual Court.

Johnson deviseth land to bee sold by his Executors, and that the money thereupon coming should bee disposed in Legacies specially expresseth and dyeth, The Executors sell the land, if the Legatories be sued in the Court Christian, a prohibition will not lye for money in Assets, and no remedy for Legacy but in the spiritual Court.

The Executors pleading *plene Administr.* the plaintife giveth in evidence, *Assets in maines*, that is, sufficient goods in their hands.

The executors plead, that the goods of the Testator now being in their hands, were to pledge by the Testator, which goods they have redeemed with





with their owne proper goods unto the full value, and the residue of the goods they had paid for the debts of the Testator as farre as they were worth upon a demurre in Law, this evidence was adjudged good, for a man shall be recompenced for that which he hath lawfully paid; As if a disseisor pay Rent, he shall recover the same in damages, and it is not like where a man deviseth that his executors shall sell the land, for there they cannot retaine, because the will is, that they shall sell. *Mich. 6. H. 6.*

Johnson deviseth Land rendring rent for years, and deviseth the rent unto *Barker*, opinion was that the Executors, and not the heires of *Barker*, should have this rent, for it was but as a Chattell in the devisee: *Fitzherbert* Justice opinion, that the Rent being incident to the reversion is of the nature of Land, and therefore no chattell.

Action of account is not against Executors, or Administrators, because they are not privie to accounts.

Two Executors were provided, that one of them shall not administer; This *Proviso* was void *per Bednell*, and *Englesby* Justices, because it restraineth the whole Authority given in the Premises.

Executors.

And if the intent of him which maketh the will to be contrary, and doth not agree with the Law, it is of no purpose; as of a devise to *Ambrose* of Land and fee-simple, and if he die without issue the Land to remaine to *Anthony*, this remainder is void.

Intent contrary to Law void.

And a devise unto the Abbot of *S. Peter*, where the foundation is *S. Paul*, is void.

Proviso.

But *Fitzherbert* Justice, contrary to the *Proviso* was good, for an Executor may use action, although he doth not administer; And that a man may make one Executor of his Plate and of his goods, another Executor of his debts, And one Executor of his goods in one Shire, and another Executor in another Shire. *Trin. 5. H. 8. fo. 14.*

Tenant for yeares deviseth this terme unto his eldest daughter, and to her issue, and the remainder to his youngest daughter, the eldest daughter dieth without issue, and her husband doth aliene and sell the terme of yeares; Opinion was that the youngest daughter was without remedy, because a remainder of a terme was void, and so a remainder void of a Chattle personall; But *Englesfield* Justice contrary, because of the intent of the devisor. *Pas. 28. H. 8.*

An Infant being Executor may make acquaintance, or sell goods.

An Infant being made an Executor may make a release, or acquittance of the debt of the Testator, and he may sell the goods of the Testator, or he may give or distribute them.

But a woman married being Executrix to another man, cannot doe so without the consent of her husband. *21. Ed. 4. fo. 41.*

Action of debt by a woman as Executrix to her husband, the defendant said that *A. B.* her husband in his life time, and he did put themselves in Arbitrement, &c. of all actions, &c. who did arbitrate, &c. that the defendant should doe, &c. in discharge of debt, and which he hath performed, &c.

&c. and after her husband died, adjudged, *per Cur* that the debt was extinct by the Arbitrement: But if the second husband doe make no act in the time of his life, the debt remaineth to the wife, being Executrix to her first husband; But if the second husband doe give away the goods which as the wife as Executrix to her first husband, the gift is good; And by this Arbitrement all actions which he had jointly against the Defendant, and a stranger, are gone and the husband with the Administer of these goods, *per Cur. 21. H. 7. f. 29.*

Action of debt against three Executors, and at the distresse two of them appeared and the third made default, The second which appeared confessed the action, whereupon judgement was given against them all of the goods of the dead, and before Execution the plaintife made his Executors and died, who did bring their *Scire facias* against the three Executors: And the two which confessed the action made default; And he which first made default appeared, and pleaded that he was never Executor nor did administer the goods as Administrator, or Executor, which was found against him, and judgement was given against them which made default for the recovery of the goods of the dead: But if the plaintif prayed execution of the goods of the dead, against him which pleaded that he was not Executor, if he hath any goods of the Testators in his hands: And if not, that then to have execution of his proper goods which were granted; And thus a man may have two judgements upon one Writ, but he shall have but one

execution against the two, *quod nota.* 14.H.7.
fo.28. & 29.

Action of debt against Executors upon Tally of the Testator, which was sealed and written by words that the Testator hath put his scale to, the same to pay twenty pounds, and scotches were in the Tally; And *Skreine* Justice, it was adjudged that the plaintife should recover nothing by his Writ, for the writing of his Tally may be washed off with water, &c. and a greater summe of money may be written in, &c. 12.H.4.fo.23.

Action of debt brought against Executors, for goods sold unto the Testator, the Attourney of the plaintife was demanded, if he should aver the Writ, who answered that he would the Writ and the suite justly, and aver, and it was awarded by *Littleton* Justice, that he should recover nothing by his Writ.

For where the Testator may wage the Law in any action brought him, there no action shall be brought, or is liable against his Executor. 15.Ed.4.
fol.25.

If Executors doe deliver or pay legacies, the debts being not paid, and the rest of the goods left are not sufficient to pay the debts; The Executors shall be charged to pay the debts with their own goods.

And Executors cannot give their owne proper goods to pay debts, and detain the goods of the Testator, As to pay twenty pounds of his owne goods, and for the same retaine a Gelding of the Testators of that value without licence of the Ordinary

Ordinary, but with his licence may. 21. *Ed. 4.*
fo. 7. per Chocke & Brian Justices.

If I make *A.* and *B.* mine Executors, and the words of Will are that *F.* and *I.* shall have the administration of my goods and chattels, this maketh *F.* and *I.* to be mine Executors. 21. *H. 6. fo. 6.*

A man delivereth goods to me, and I make two Executors and dye, and one of them my Executors happen to have possession of the same, and an action of Detinue is brought against him onely for the same goods and it was adjudged to bee good.

For the possession of the goods doth charge him, and not the Bailement nor the Executorship. 29. *E. 3. fo. 5.*

The Sheriffe retourned upon a *Fieri facias*, that the Executors had conveyed the goods to their owne uses, whereupon issued forth a *Fieri facias* to the Sheriffe, to take the proper goods of the Executors, to pay the debt, and damages, and after a *Capias* and *Exigent* was awarded against them. 18. *H. 6.*

And in an action of debt against three Executors, the one pleaded *plene Administravit*, the second made default, the third plead *ne unques Executor*, judgment shall bee against the goods of the dead onely against the first and second Executors if it passe against them.

But against the third Executor, which pleaded that plea which was false, not Executor or any such plea, which is a Barre to the plaintife for ever which is found against him, Judgement shall be

be, that Execution shall be of the goods of the dead; And if there are none left, then of the proper goods.

And that upon pleading, *riens intermaines*, which is, that the Executors have no goods left in their hands to pay their debts: Yet if goods happen after to come into the hands of the Executors, the plaintife shall have after a *Scire facias* out of the same Record, by surmise to have execution of the goods. *per Cur. 33. H. 6. fo. 23. 24.*

And if likewise it was adjudged, *Hil. 9. Hen. 7.* that if an action of debt is brought against Executors which plead *riens intermaines*, or that they have fully Administred, and it is found that they have assets, yet the plaintife shall recover nothing but the goods of the dead, which are in their hands, and nothing of the proper goods of the Executors.

But if they plead that they were not Executors, then they must pay the debts with their owne goods, for their false plea, if it be found that they have Administred any thing. *Hil. 9. Hen. 7. fo. 1. & 17. 23. H. 8. per Cur.*

An heire
pleadeth *riens
per descent*, it is
found that an
Acre of ground
descended, judg
ment entred
for the whole,
but Execution
onely the acre
of ground.

The heire of a man is sued for a 1000. l. being the debt of his Father, and other plead *riens per descent*, that is, he hath no land descended to him, from his Father in fee; And it is found by tryall that he hath one acre descended to him from his Father in fee; The heire shall be charged to pay the 1000. l. because of his false plea, for he had the perfect notice what land he had by descent.

But nothing shall be put in execution for the
1000. l.

1000.l. but only this acre of land. 34. H. 6. f. 22. 23

Action of debt brought against Executors, upon an Obligation, It is a good plea for them to say they have no goods in their hands of the Testators but 20.l. And that *I. Johnson* hath recovered against them 20.l. as Executors.

And if there be two severall recoveries of debts against Executors; The first recoverer must bee first paid, and have the first Execution: For if the Executors doe pay the last recoverer before they have the first, a *Devastavit* shall be returned against them, and they shall be charged to pay the said debt with their own proper goods. 7. H. 7. *per Vaviser* Justice.

The Judgment will be first paid by Executors, or else a *Devastavit* may be returned.

And if the Testator is bound in two Obligations, and the day of the one is before the day of payment of the other; If the Executors pay him which hath the last day, and there remaineth no more goods of the dead, they must be charged to pay him to whom the Testator was first bound with their owne proper goods, *per Check* and *Brian* Justices.

Likewise the first bound, the first paid.

Obligations, Debts.

THree men are bound in an Obligation by these words, *Obligamus nos & utrumque nostrum, per se pro toto & in solido*, Two men which were bound, were sued upon the Bond who pleaded *non est factum*, which was found against them by verdict.

Obligamus nos & utrumque nostrum.

And

And in Arrest of judgement it was said, that one of them, or all of them, should be sued upon bond, and not two of them : But it doth not appeare to the Court by the Roule which was *quod querens protulit Scriptum predictum quod debitum, & testatur quod tres fuerunt obligati*, which is that the plaintife did shew the writing aforesaid, that the debt aforesaid, &c. testifying that three were bound, wherefore judgement was given for the plaintife. *Hil. 14. Eliz.*

Covenants of:
Indenture.

Rent.

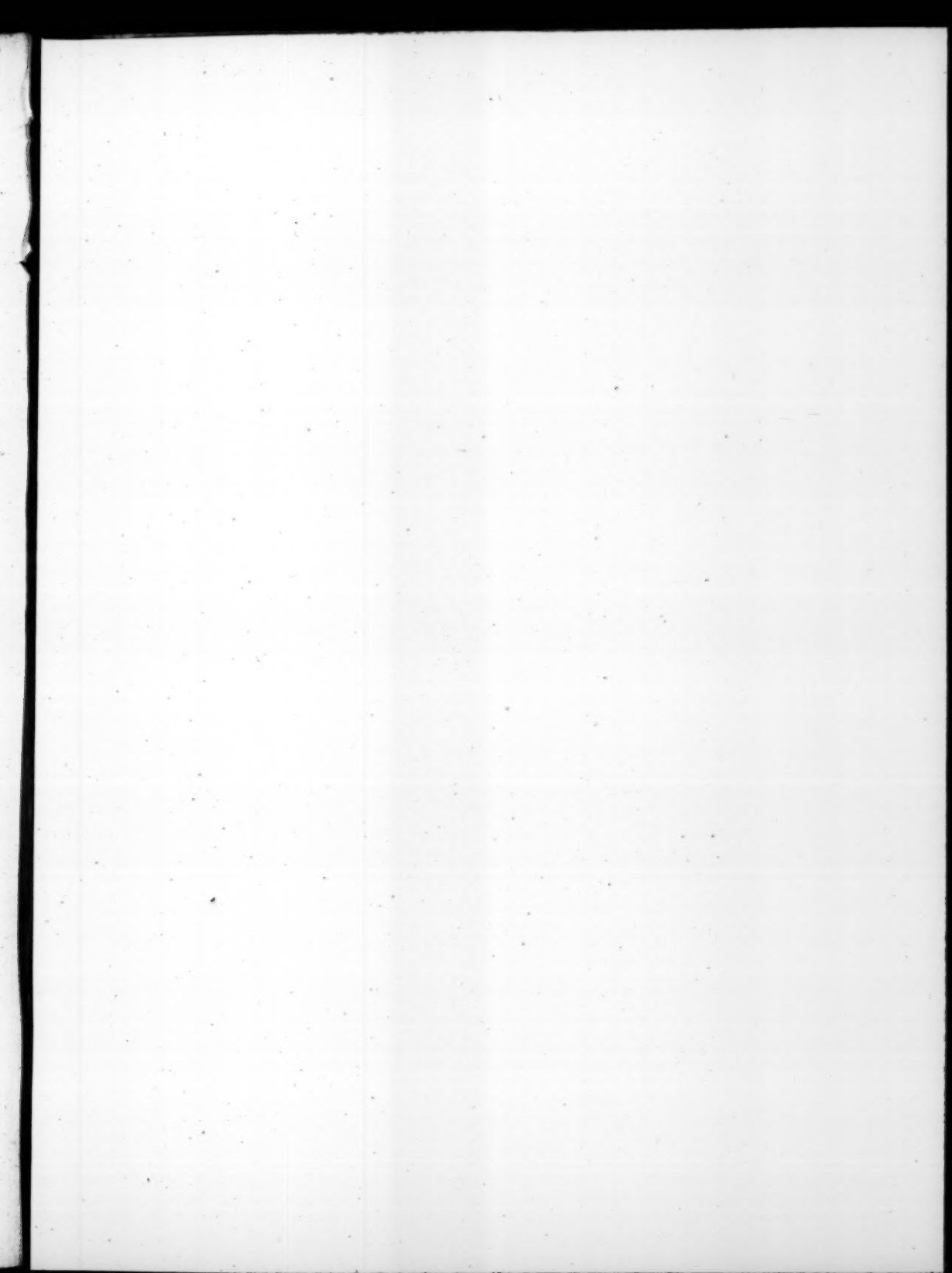
Rent.

Verdict.

Debt against a
Saylor, Execu-
tors.

Harrison bound to performe the Covenants, contained in a paire of Indentures of a demisee and lease of Tithes, and there was a *proviso* in the lease : That if *Harrison* the Tenant for yeares attempt and prosecute action against *Johnson*, which pretendeth title to the Land by vertue of a former Lease; And if the verdict passing against *Harrison*, that then the rent should cease; action of debt was brought against *Harrison*, for not payment of the Rent upon the Obligation, *Harrison* plead that *Johnson* did enjoy the tithe by vertue of his former Lease: So that *Harrison* could not injoy his lease, nor have the Tithe according to his lease : And therefore no Rent, Article, nor Covenant was by him to be performed, adjudged no plea, *per Cur.* for the Rent was payable, unlesse a verdict had passed against *Harrison* for the lease at the suit of *Johnson*. *Mich. 15. Eliz. Regina.*

Whittacres brought an action of Debt against the Warden of the Fleete, and upon an escape made of a Prisoner in the Fleete condemned in debt in the life of the Testator, adjudged a void action





Action, *per Cur.* for the offence was but *trespasse Qui moritur cum persona*, which dyeth with the person.

And by the Common Law an action of Debt was not lyable against the Gardian of the Fleete, but an Action upon the Case untill the Statute of Ric. 1. chap. 11. which giveth action of Debt against the Gardian of the Fleete for such escape.

Debt against the Executors of the Warden of the Fleete for an escape.

But the Statute doth not speake of the heire, nor of the Executor, but if the Action had beene brought in the life of the Gardian, and a recovery had been of the same, it were otherwise, *Mich. 15. Eliz. Re.*

Under Marshall taketh an Obligation of one being in Execution for debt, and of an estranger to save him harmeleffe of escapes and letteth the Prisoner goe at large.

And although the Statute of 223. &c. of King H. the sixt, toucheth onely Sheriffes, Gardians of the Fleete and Palace, and Ministers of the Sheriffe.

Opinion that the Obligation was voide, and the written Statute is, that Sheriffe, nor Officers, (and not none of his Officers) as it is imprinted.

And also opinion was that the Condition was contrary to the Law, and therefore the Obligation void, *Pas. 15. Eliz. Re.*

Anne Felson is bound in a 100.l. by Obligation to W. Iervingham, after William Iervingham taketh her to Wife, the debt is gone and shall never

ver

ver bee revived although that *Iervingham* after dyeth.

Iervis Case to *Anne Banister*, Pas. 10. H. 7. fol. 24.

Iervingham bound in a 100. l. to *Anne Felton* by Obligation, after *Anne Felton* taketh him to husband, the debt is gone for ever, although they be after divorced, *per Cur. Mich. 11. H. 7. fo. 4.*

Heire not named in the Obligation,

The heire shall not be charged in an Obligation, except he be expressed and nominated in the same.

Executors not named in the Obligation.

But Executors shall be charged, although not expressed or named, *per Cur. Trin. 28. H. 8.*

Obligation to enjoy Copyhold land.

Harrison surrendered Copyhold land unto the use of *Germin*, and is bound in an Obligation of a 100. l. that *Germin* shall enjoy and possesse the land without the interruption of any, *Germin* after committeth a forfeiture of the Copyhold land and the Lord entreth.

Opinion was, that the Obligation was not forfeited, because it was his own, *Ad. Hil. 28. H. 8.*

A Bond to doe two things, in the Copulative and in the Disjunctive a difference.

Draper bound in an Obligation to doe two things in Copulative, if hee performed the one thing and not the other, the Obligation was forfeited.

But otherwise it is if hee were bound to pay one thing or another in the Disjunctive, if he performed any thing it is sufficient if hee performed not both, adjudged *per Cur. Mich. 12. H. 7. fo. 10.*

Debt upon a simple Contract.

A man indebted to me upon a simple contract and dyeth, I have no remedy for my debts against his Executors by Common Law, but I may

may have *Quo minus* in the Exchequer Chamber supposing that I am indebted unto the King, and that he which was the Testator did owe me so much *Quo minus debita recusat solvere.*

Recovery by
Quo minus in
the Exchequer.

This practise commonly practised *per Davers* Justice, *Trin. 11. H. 7. fo. 26.*

Atkinson granted a Rent in fee to me, and over granteth that if the Rent behinde, &c. that he shall forfeite 10. l. to me and mine heires, if rent be behinde unpaid, I may have an action of Debt for the penalty.

Debt for a pen-
naltie forfeited
for not pay-
ment of Rent.

And the heire shall have this penalty, and shall have his Writ of Debt for it, and not my Executors, because this grant is an inheritance which continueth, *Fitzh.*

To be recove-
red by the
heire and not
Executor.

Ienkinson bringeth his action of Debt against *Germin*, and declareth that hee was seised on a Mannor, in the which was a Pound time out of minde, and prescribed to have of every man that did breake the Pound 3. l. and saith that *Germin* the Defendant had parcel of the Mannor demised unto him to hold at will rendring rent by the yeare, and after the rent which was behinde unpaid, and he entred and distrained shocks of Corne, and impounded them in the same place and land where they were taken, &c. and the Defendant *Germin* did enter and broke the Pound and tooke the Distresse away, and upon a Demur adjudged no plea.

Shocks of Corn
Distrained, &c.
impounded for
3. l. forfeited
for a Pound
breach by pre-
scription.

For the prescription is not to binde a stranger to performe the Custome, for it cannot have a good beginning, nor lawfull.

Prescription is
not good
which hath no
good begin-
ning.

But

By-Laws made
by Tenants in
a Leete doth
binde them.

A Village may
make by-Laws.

Action of debt
for a payne in
a by-Law.

Shocks of Corn
cannot be di-
strained but
for damage
feasant.

A Condition
performed be-
fore the day is
good.

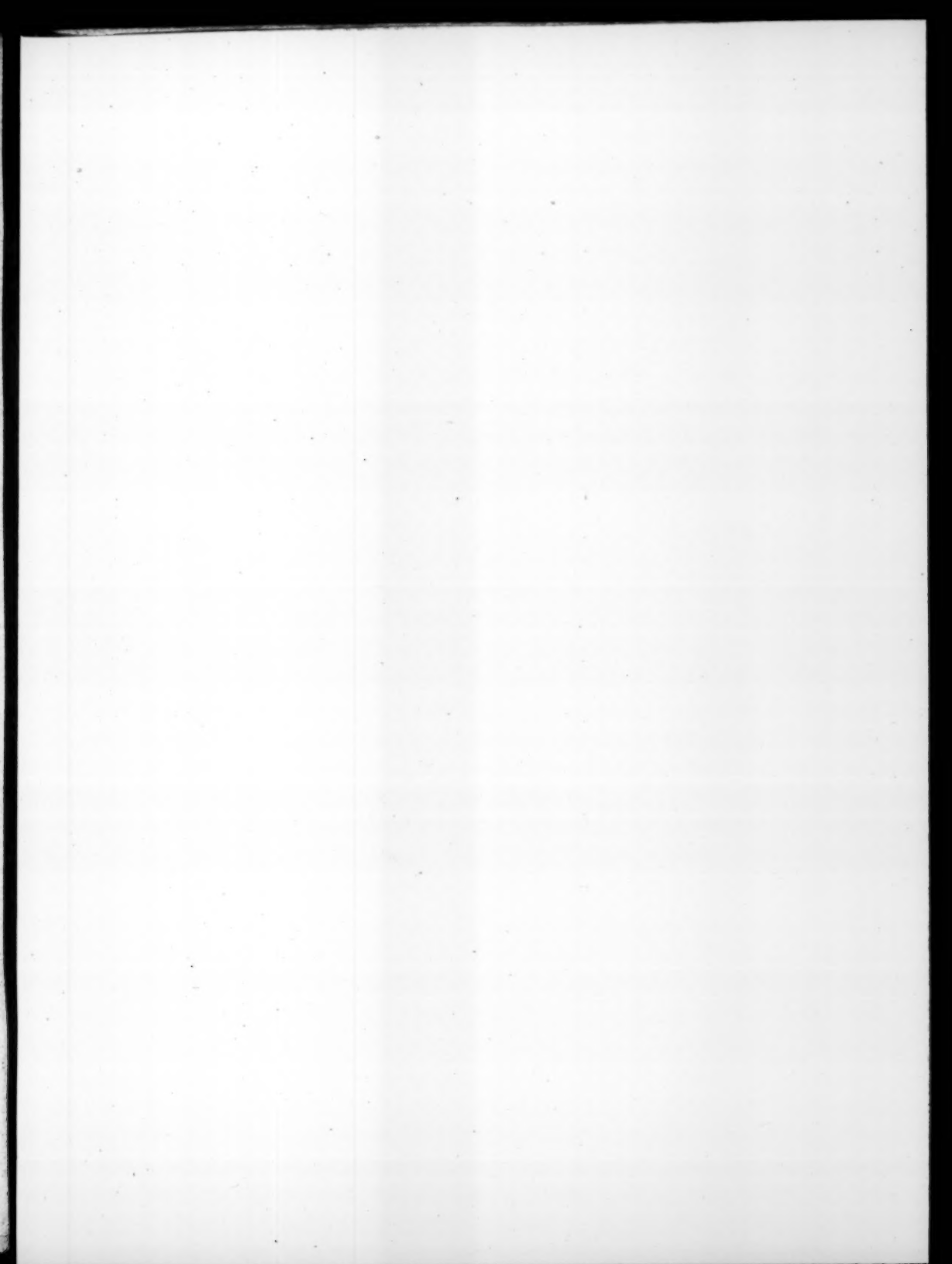
But if the custome were that every Tenant or of them which holdeth of the Mannor or within the Mannor, did breake the Pound should pay the Lord 3.l. this were a good custome, because it had a good beginning, for the Lord may give his land to hold by services, as if the Tenants grant unto the Lord at the day, that if there were rent behinde unpaid, &c. to pay unto the 20.s. &c. and may prescribe to distraine for it, and they may sell the Distresse because a Leet is the Court of the King.

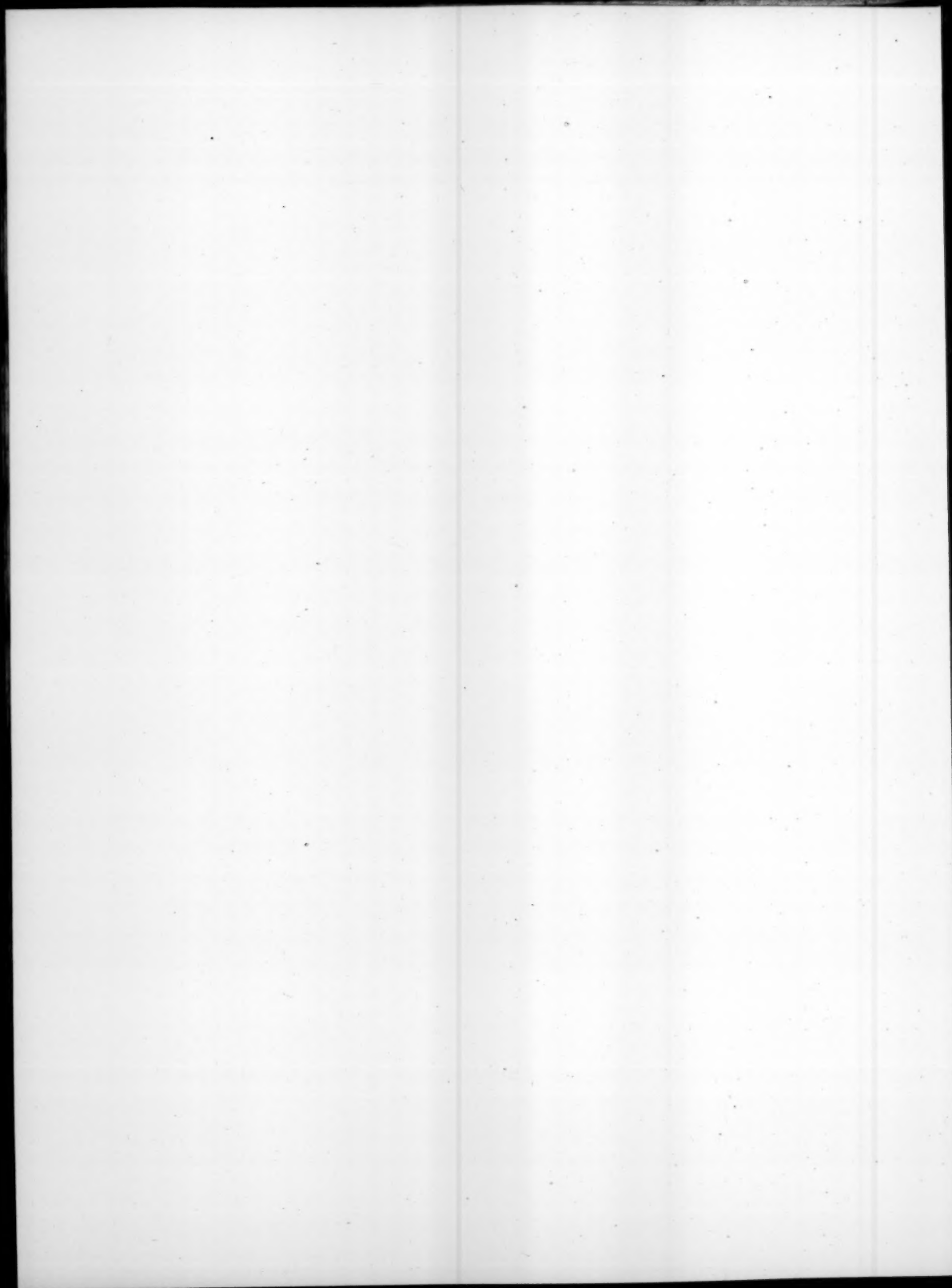
And a Village may make by-Lawes amongst themselves, that if any put any beast into their Common before such a day, to pay 40.s. it is a good custome, and it shall binde them, but such a custome doth not binde an estranger, but where such a custome is good, action of Debt is good, *per Cur.*

And a man cannot distraine such Shocks of Corne for rent behinde, because it cannot bee replevied nor retourned for the incertainty therof, but for damage feasant a man may distraine them in his land, *per Cur. 11.H.7.*

Action of Debt upon an Obligation of an 110.l. the Defendant saith that the Obligation is endorsed with such a Condition that if the Defendant did enfeoffe *John Atkinson* of 20. acres of land betweene the Feast of *Easter*, and the Feast of *Pentecost* the same yeare, &c. the Defendant saith that the 20. day of *March* before any of the said Feast encoffed *John Atkinson*, adjudged a good plea.

John





John Pollard was bound in a 100. l. to *William Vavasar* to performe Covenants in an Indenture, and upon an action of Debt *John Pollard* the Defendant demanded the hearing of the hearing of the Indenture, and it was denied him, because the Indenture was upon Record in the Court, otherwise hee should have had his demaund by the Judgement of the Court, and the Covenant was;

Indenture demanded to be read in Court not on Record must be granted, not otherwise.

That whereas one *Richard Banks* had married with *Anne* the daughter of *William Vavasar*, the Plaintifes action was, that if the said *R.* within 8. dayes after the death of *Peter Banks* his Father enfeoffed certaine men of land of 4. pound by the yeare, to the intent that the Feoffees should make an estate over againe to the said *Richard Banks* and *Anne* his wife for the terme of their two lives, &c. and that if the said *Peter Banks* enfeoffed certaine men of land of 40. l. by the yeare unto the same intent, and if *Richard* doe dye living *P.* his Father, and the Feoffees make estate of the same, &c. unto *Anne* during her life, that then the Obligation to be void &c. The Defendant *John Pollard* plead that *Richard Banks* in the life of his Father did infeoffe such men, &c. to the intent that the Feoffees should make estates againe to him and his wife for terme of their lives, and demand Judgement of Action, a good plea, *per Cur.* the reasons follow.

Opinion of *Reade* Justice, that the Plea not good for two causes, and so the Obligation forfeited, the one cause, because he made the Feofment in the life of his Father, and the Indenture

saith that it should be done after the death of *P.* his Father, and therefore the Covenant and Condition not performed, the other Cause, for that the said *Peter Banks* the Father did not make the Feoffment in his life.

Condition for payment performed before the day, good.

Fineux Justice, and the Court of a contrary opinion, and that the Condition was not performed, for if I be bound by Obligation to pay money the 10. day of *March*, &c. If I pay it before the day, my Obligation is discharged, and no difference if I be bound to pay the money to a stranger, or if I give him a Gelding, or infeoffe him of 10. Acres of land, in the discharge of the money, I am discharged of the Obligation if he accept it before the day, *vide postea*.

Condition to performe a thing to a stranger.

Acceptance of money or of estate before the day or after the day is good.

If I be bound in Obligation upon Condition, that if I enfeoffe *I. Johnson* of land the 10. day of &c. that then the Obligation to be void; If I proffer to *Johnson* to enfeoffe him, and hee refuse to be infeoffed, I have forfeited my Obligation, for that was my folly that I would bee bound to infeoffe *Johnson* who was an estranger and party privy to the Condition, but if *Johnson* accept the Feoffment before the day or at the day, the Obligation is void.

If I be bound unto *Robinson* in a 100.l. by Obligation to infeoffe *Atkinson* of land by the tenth of &c. if I infeoffe him after the day, and he accept it, I have not forfeited my Obligation, for I have performed the effect of the Condition although it be after the day, for if it bee once done it cannot be undone.

And

And for the other point, because he sheweth not that *Peter* the Father did not make feoffement in his life, therefore the Condition not performed.

When no day is limited in the Indenture hee may doe it during his life at any time, and when he is dead he cannot doe it, as if I be bound, &c. that if I infeoffe you of the Mannor of Saint, &c. that then, &c. and no day limited &c. if you dye I have not forfeited my Obligation, for I have space to doe it during my life, and if you dye I cannot doe it.

But otherwise the Law is if an Obligation with a Condition to pay a 100.l. if there bee no day of payment it must be paid presently, or else the Obligation is forfeited because it is a duty present, but the Law is not so in other Cases. H.9.H.7. and 21.fo.17.

But if I be bound to pay *Johnson* by Obligation a 100.l. at the Church porch of Dunmow, he is not bound to receive it but in the same place.

Place of payment.

Atkinson Covenanteth by Indenture made betweene him and *Barnard*, that *Atkinson* by the assent of *Clark* and *Edwick* should bee certaine Acts and things, and in the end of the Indenture *Atkinson* was bound in a 100.l. to performe the Covenants made by *Atkinson*. *Germin* and *Lucken* action of debt good against *Atkinson* for the 100.l. although *Germin* and *Lucken* be not in the Indenture, Mich. 11.H.7.fo.6.

Covenants in an Indenture.

Atkinson bound in 100.l. by Obligation and hath land in Gavel kinde, and hath many sons and

Gavel Custom.

dieth, a joynt action of Debt must be against all the sonnes, and the plaintife must declare upon the custome, *per Cur. Hil. 11. H. 7. fo. 24.*

If one peny of payment wanteth, the Obligation is forfeited.

Atkinson bound in a 100.l. by Obligation with Condition to pay *Savin* 60.l. &c. *Atkinson* payeth all but one peny, yet hee hath forfeited his Obligation. *Pas. 10. H. 7. fo. 24.*

Condition to enfeoff one of a Mannor forfeited for dismembering part thereof.

Atkinson bound in a 100.l. to *Johnson* to infeoffe him of the Mannor of *Sutton*, and after he granteth the Advowson of the Mannor unto *Germin*, and after he infeoffeth *Johnson* in the Mannor; He hath forfeited his Obligation, because the Mannor at the time of the enfeoffment, was not so commodious and profitable, as it was at the making and delivery of the Obligation. *per Brian* Chiefe Justice in the Common Pleas, and *Keble* Sergeant. *Pas. 10. H. 7. fo. 19.*

Arrerages of a lease pleading Accord.

Action of debt upon the arrerages of a lease for yeares, Accord pleaded is no plea, for Accord is but matter in faite, and a man may wage his Law of an Accord.

But the Lease which is the cause of the action is in notice of the Countrey, against which wager of Law is not, therefore the plea not good. *per Cur. Mich. 10. H. 7. fo. 4.*

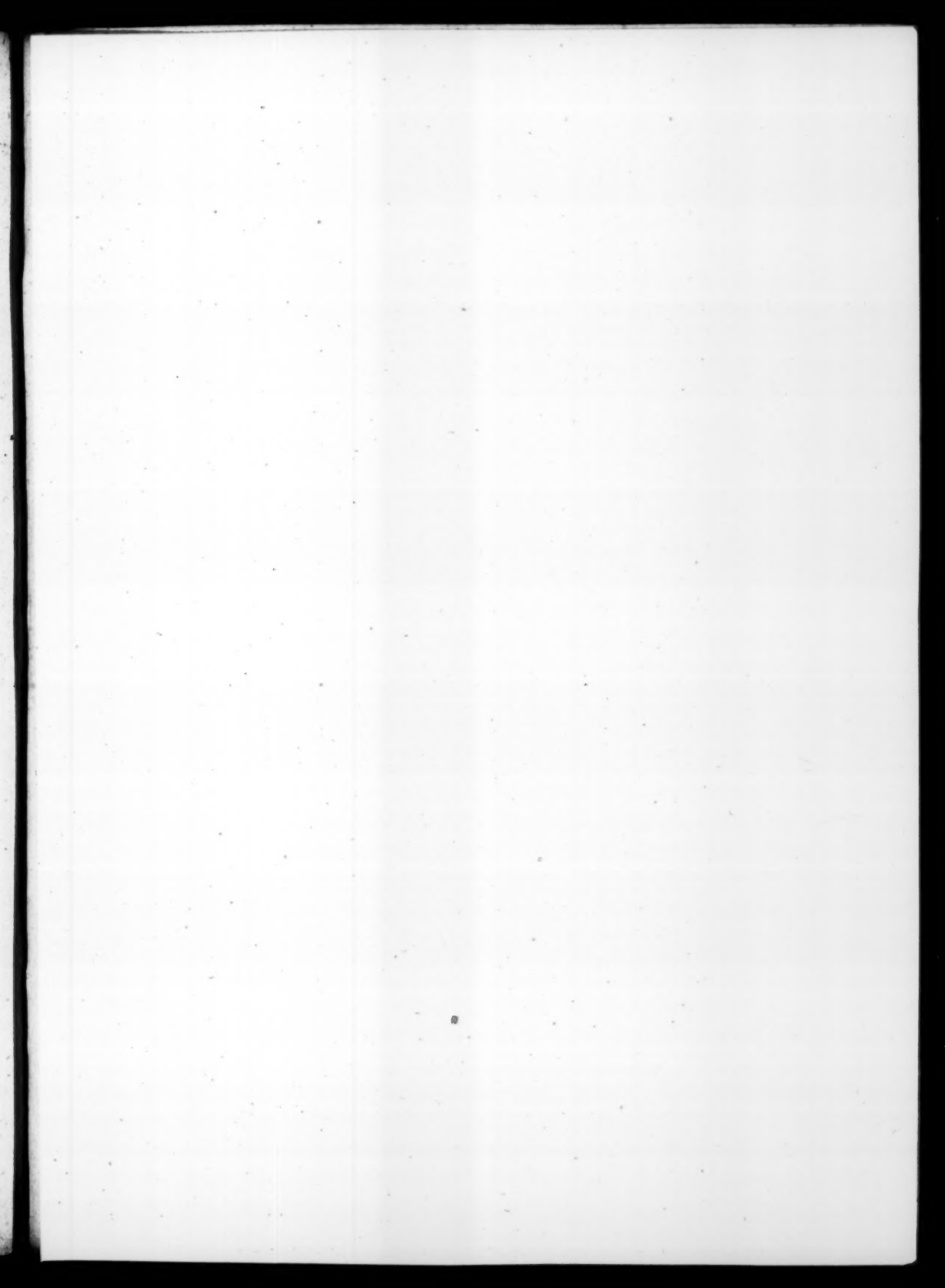
Falſe Latin not materiall.

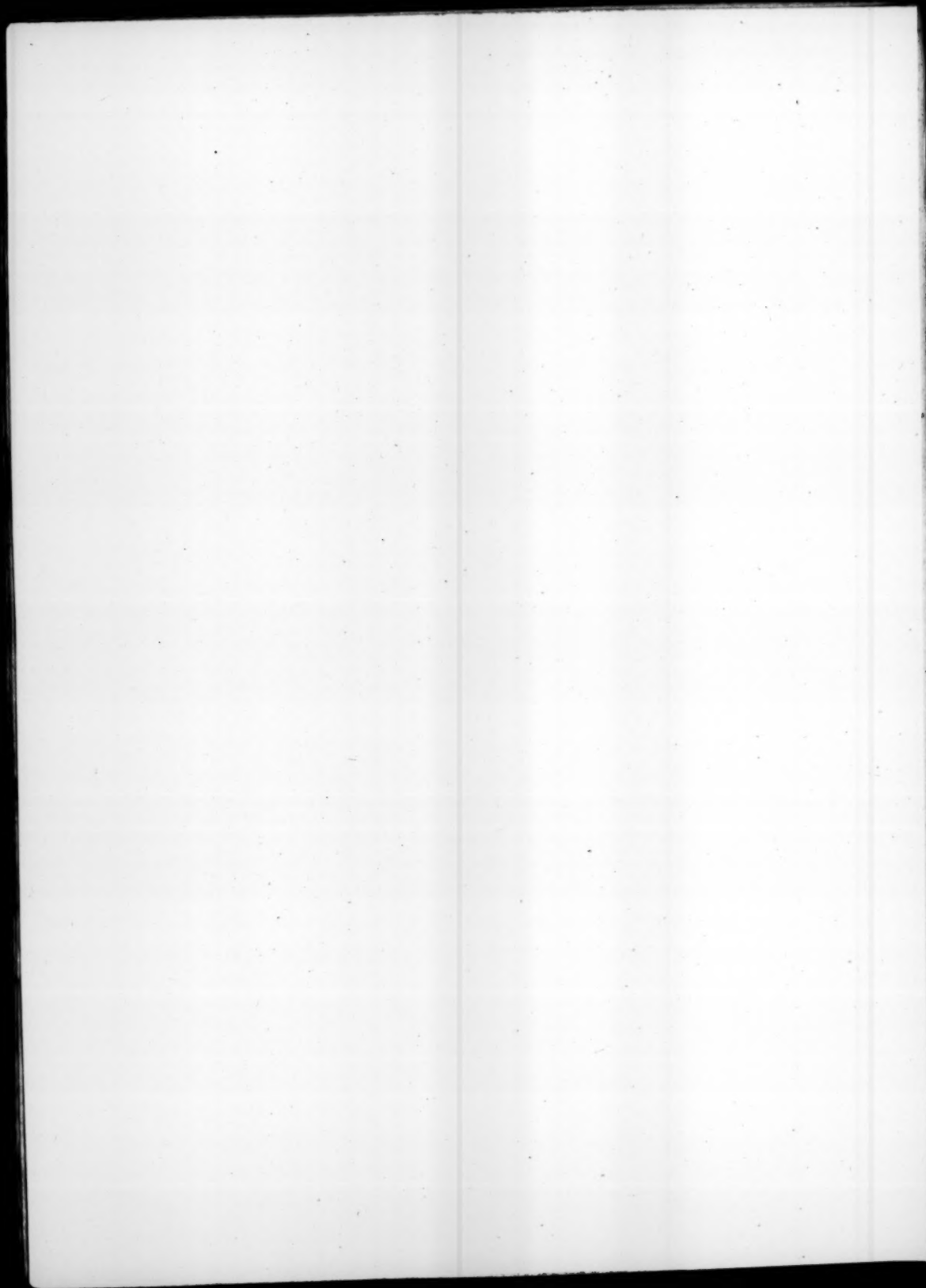
Obligation made with false Latin nevertheless is good. *Hil. 9. H. 7. fo. 16.*

Sequeſtration.

Action of Debt lyable against a Bishop if hee sequester the goods of the dead, *per Justice Fineux Trin. 5. H. 7. fo. 34.*

Debt upon an Obligation, the Defendant pleadeth in Barre; That it was indorsed upon the Condi-





Condition to make an account 10.1. And that the Plaintife had accepted a Lease at Will in satisfaction of all accounts, and demanded judgement of Action, &c. adjudged no Barre.

Acceptance
Collaterall
pleaded.

For where a Condition in Collaterall acceptance of another thing is no Barre: But if he plead payment of money, it is a good Barre. *P.4.H. 8.*

Payment of
mony pleaded.

21.H.4. & 24.H.7.17. & 6.20.

Action of Debt upon an Obligation, with a Condition to be performed in divers points, If issue be joyned upon the breach of one payment which is found by verdict against the plaintife, he shall be barred: And although after all the other points of the Condition to be broken, the plaintife shall never after commence upon the same Obligation any more adjudged, *per Cur.*

Condition in
divers points.

Debt upon an Indenture in which a man was bound to pay 20.1. payment pleaded is no Plea without an acquittance, Nor upon a single Obligation, But with an Obligation with penalty, payment pleaded is a good plea.

Debt upon Indenture simple Obligation.

Payment
pleaded.

Wager of Law is not against a Bill written and sealed.

Wager of
Law.

Against a Talley written and sealed otherwise it is, if it be notched.

Boarding!

Wager of Law is not upon an Action of Debt for Cotages or boarding, for arrerages of account and for Rent due by a Lease, *per Fitz. James Justice*, But for such Rent, the Tenant for yeares may plead levied by distresse, or may plead payment although the Rent be reserved by Deed, because the Lease is the foundation of the

Action

Action and not the Deed.

Contract simple.

If a man be indebted by a simple Contract, and after is bound in an Obligation for payment thereof, the Contract is gone: the like Law upon a judgement.

Bound to a stranger.

To enfeoff a woman after married to the Obligor.

Sutton bound by Obligation in a 100*l.* to *Wood*, the Condition that if *Sutton* after the death of his Father or within three months after made a sufficient and a sure estate in certaine Lands unto *A. Archer*, &c. That then the Obligation to be void, *Sutton* pleads that the same woman *A. Archer* did Contract her selfe with him, and married him in the life of his father, and that the espousals continued betweene them three moneths, after the death of his Father; So he could not make this feoffment *A.* being his wife, Obligation forfeited, *per Cur.*

For when a condition extendeth to an estranger to be performed, it must be performed at his perill, but the Act of God might avoided it, that is if he had died.

And the condition might well have beene performed, For *Sutton* might have caused an estranger to have brought a Writ of Covenant against him and his wife, and so levy a fine, &c. Or he might within three moneths make a Lease for terme of one moneth, the remainder to *A.* his wife, &c.

Condition impossible.

Sutton bound by Obligation to *Wood*, that *Atkinson* shall marry and take to wife *A. Archer*, &c. *Sutton* the Obligor marieth himselfe with *A. Archer*, wherefore *Atkinson* cannot marry her.

Sutton

Sutton hath forfeited his Obligation, for that by his owne Act he hath made the Condition impossible.

But if *Wood* the Obligee marry *A. Archer* before, &c. Now *Atkinson* cannot marrie her and the Obligation not forfeited, because *Wood* the Obligee is party, *per Cur.*

Brian Chiefe Justice opinion is, that if the condition against the Law, all is void, both the Obligation and Condition. Condition against the Law.

But otherwise the Law is if the Condition is impossible, for then the Condition is void, and the Obligation good. *Pas. 4. H. 7. fo. 4. Pas. 2. Ed. 4. fo. 3. Mich. 8. Ed. 4. fo. 15. Pas. 33. H. 6. fo. 18. in agreeing.* Condition impossible void, and Bond good.

Obligation made and sealed by two men, if one of the seales is taken off, and from the Obligation, or if it rased or interlined, or if it be delivered to a Lay-man not literated in any other forme, or some parcell of the summe of money altered, or if the Obligation be made by feme Covert, in the beginning all were void in Law and a man plead to these *non est factum*, *per Cur. Hil. 3. H. 7. fo. 5. Mich. 7. H. 6. fo. 9.* Plea non est factum.

But if an Infant within age, or a man in prison make such a Bond, they must not plead *non est factum*, but they must recite the speciall matter and conclude judgement *si actio*. Plead judgement the action.

An Obligation or any other Deed which is good when it is first delivered in the beginning, a second delivery of the same taketh no effect but it is cleane void. A second delivery.

A second delivery.

And if an Infant within age, feme Covert, or a man in prison deliver a Bond, &c. as their Deed, &c. and after the Infant commeth to full age, or the husband of the wife dieth, or if he which is in prison is at large, if they make a second delivery of their Obligation or, &c. to the Obligee, This second delivery is void, because they take effect at the beginning and at the first delivery.

A release twice delivered.

But if I release my right unto *Atkinson* which I have of the Mannor of Dale, and have no right unto it; If I after purchase the Mannor of Dale, and after deliver the release as my Deed againe, this second delivery is good, because it tooke no effect at the beginning.

Matter in escript, matter in fait pleaded.

A man cannot avoid Obligation which is matter *escript* by matter *in fait*; As if action of Debt is brought against Apprentice being bound by covenant to serve, If hee plead his Masters discharge, this is not good except he have a writing of discharge and that plea.

Obligation discharged in part.

Deane of *Pauls* bringeth his Action upon an Obligation, the Defendant pleads and alleadgeth that the Condition was, that whereas he was chosen to be receiver unto the Deane of all his Rents in London appertaining to the same Deane.

And if he made his Annuall accounts of his said Rents unto the Deane so long as he was in Office, that then the Obligation to be void.

And saith that the said Deane made one *Vnderwood* his Receiver of two Tenements in the said Citie: So that he discharged him before hee received, and demanded Judgement of Action

&c.

&c. A good plea, *per Cur. Mich. 4, H. 7 fo. 17.*

For if a man be bound to performe a thing which is intire, when any part thereof is discharged, all is discharged; As if a man be bound to make a house, and the Obligee discharge the Obligor of one Post of Timber, he is discharged of all.

Obligation intire.

I make a Lease for 20.s. reserving Rent, And after the Leassee is bound by Obligation to pay the Rent, &c. And the Obligee the Land-lord enter into acre, The penalty of the Obligation is saved; Because the penalty dependeth upon an intire thing, parcell of which is discharged by the Obligee the Land-lord.

Parcell of an intire thing discharged.

Brian Chiefe Justice opinion, that there is a diversity when the Condition of an Obligation is for the advantage of the Obligee, or Obligor; For if the Condition be for the advantage of the Obligor, then a discharge of parcell of the Condition is no discharge.

Condition when advantageth Obligor, or Obligee.

Diversity.

As if I be bound to goe with *Aeton*, *Barnard* and *Cracknell*, yet I must goe with *Aeton* and *Barnard*, or else I have forfeited my Obligation.

If I be bound to plow all the Land of *Atkinson* in such a Parish of *Atkinson*, the Obligee discharge me for plowing parcell of the Land, I must plow the rest or else my Obligation is forfeited, because it is for my benefit and advantage which am the Obligor.

Atkinson retained in service and is bound in Obligation in 100.l. to serve one yeare, if parcell of his service is discharged yet he must serve the

Advantage of the Obligor.

rem.

remnant of the yeare, because it is for the advantage of the Obligor.

Advantage of
the Obligee.

But in a Rent reserved upon a Lease of twenty acres of Land, the Tenant being bound by Obligation to pay the Rent, If I the Obligee the Land-lord enter into one acre parcell of, &c. the Obligation is dissolved in all, because it is for the advantage of the Obligee, and disadvantage of the Obligor the Tenant, Agreed *per Cur.* in the same case that a Deane and Chapter cannot have servant for one day but it must be in writing. *Pas. 4.H.7.fo.6.*

Servant retained.

Indenture
plead no Bar.

A. Hunt and *Ieffrie* are bound in an Obligation, and every of them in the whole to *Hutchin*, and *Hutchin* hath Judgment to recover against *Hunt* and commenceth an Action against *Arnold*, and *Ieffrie*.

Execution
pleaded a Bar.

This recovery against *Hunt* is no Barre, because *Hutchin* is not satisfied of his due, But an Execution pleaded is a good plea in this matter, otherwise not, And he must shew an acquittance of the payment or else they shall be charged. *Pas. 4.H.7.fo.8. Pas. 17.E.3.fo.24. per Cur.*

Acquittance.

Debt upon
Indenture.

Action of Debt upon an Indenture in which a man was bound in 20.l. viz. *Ad quas conventiones perimplend. Obligo me in, 20.l. &c.*

Payment
pleaded in
Plea.

Single Obligation.

Acceptance
pleaded a good
Bar.

To plead payment is no plea without an acquittance, the like Law is of a single Obligation; And this bond in the Indenture is a single Obligation: But payment pleaded upon Obligation with a penalty is a good Barre, *per Cur.*

Ashfield is bound to *Barnard* in a 100.l. That
French

French shall pay unto *Barnard* 50.l. &c.

Barnard accepteth a Gelding of *French* for the debt, the Obligation is discharged, but if the payment in the Condition had beene to an estranger and not to *Barnard* the Obligee, the acceptance of the Gelding had not discharged the Obligation.

Acceptance
pleaded no
Barre.

Trin. 3. Eli. R. 9. H. 7. fo. 17. & 21.

Action of debt against the sonne and heire upon an Obligation made by his Father, the sonne selleth the Land, hanging the Writ which was affets in fee, and now pleads *rien per discent*, nothing *per discent*, the day of the Writ purchased and it was found against him.

Action of debt
against the
heire for the
debt of his Fa-
ther.

Judgement was that the *Elegit* should passe to have Execution of the Moiety or halfe of all the Lands of the heire as if it were his owne proper debt. *Trin. 4. Mar.*

A man in Execution for Debt shall not be dismissed by protection *de servicio Regis* because he is in safe keeping. *per Cur.*

Protection.

And if by the Statute made *Anno primo Ric. 2. cap. 12.* he be set at liberty by Writ of commandement of the King or by Bailie, the Jailor shall bee charged with the debt. But of this a doubt. *5. Marie R.*

A man condemned in debt or damages and hath laid in severall Shires, the Plaintiffe may have *Elegit* in any of the Shires or Counties for all his debt, or he may devide his debt.

Execution
Elegit.

Condition of an Obligation that if *I. Sanders* doth not prove suggestion of a Bill depending in the Court of Requests, before the *Vtas* of *S. Hilarie*,

Death pleaded
in Barre.

lary, then if he pay 20. l. the Bond to be void, it is a good plea in bar for the Defendant to acknowledge that *John Saunders* died before the *Vtas* of *S. Hilary*, Pas. 9. Eliz. R.

Debt not upon
escape against
an heire no
Executor.

Action of Debt is not against the heire of a Jaylor for an escape, for the heire shall not be charged for the debt by the Common Law, nor by Statute Law if hee bee not named, although it bee recovered in the life of his Father.

No Elegit
heire.

But upon an Elegit the heire shall be charged as Tenant to the land and action of Debt against the Executors of a Jaylor is not, *Hil. 10. Eliz. R.*

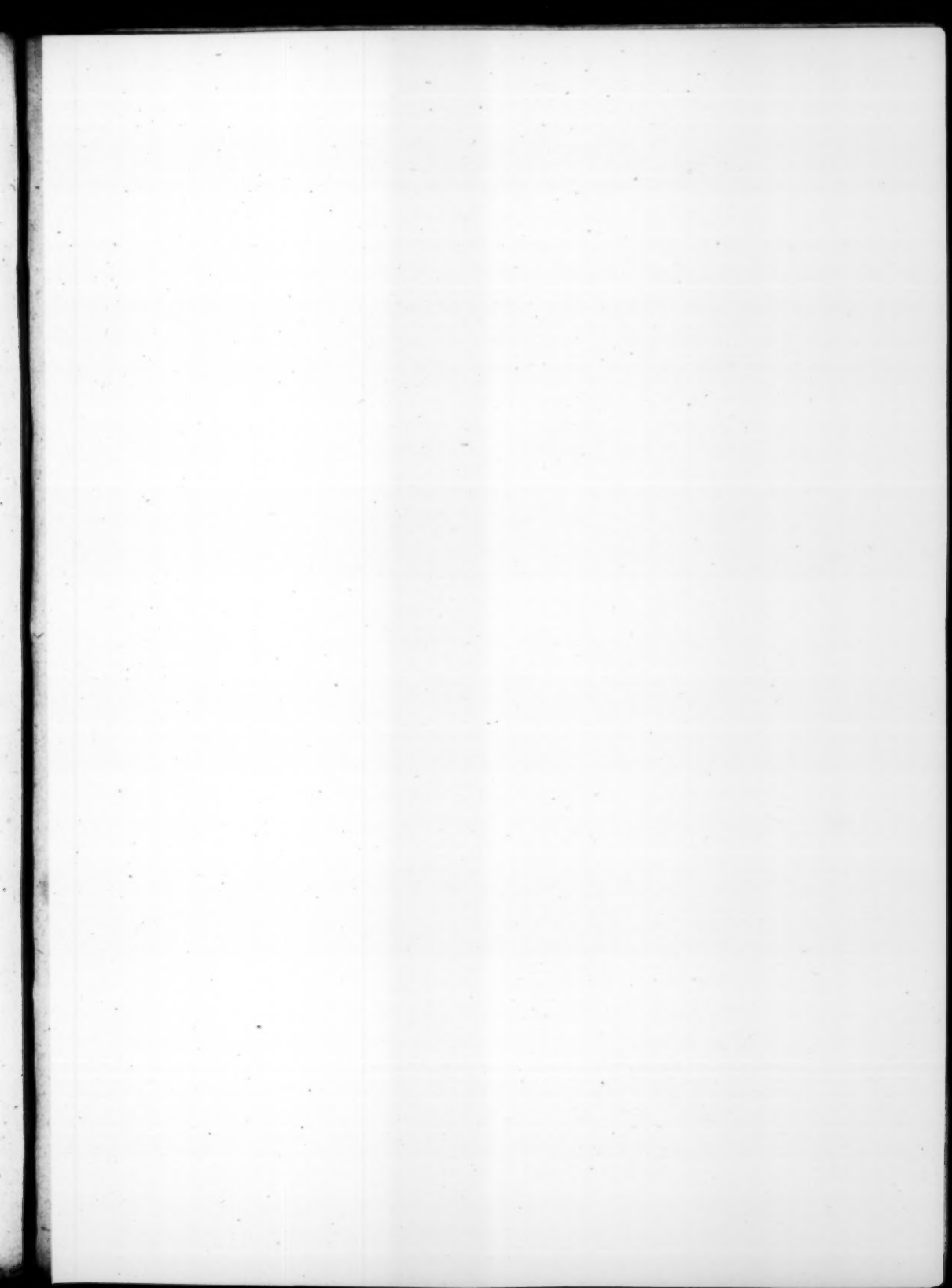
Pleading no-
thing by def-
cent by the
heire Affets.

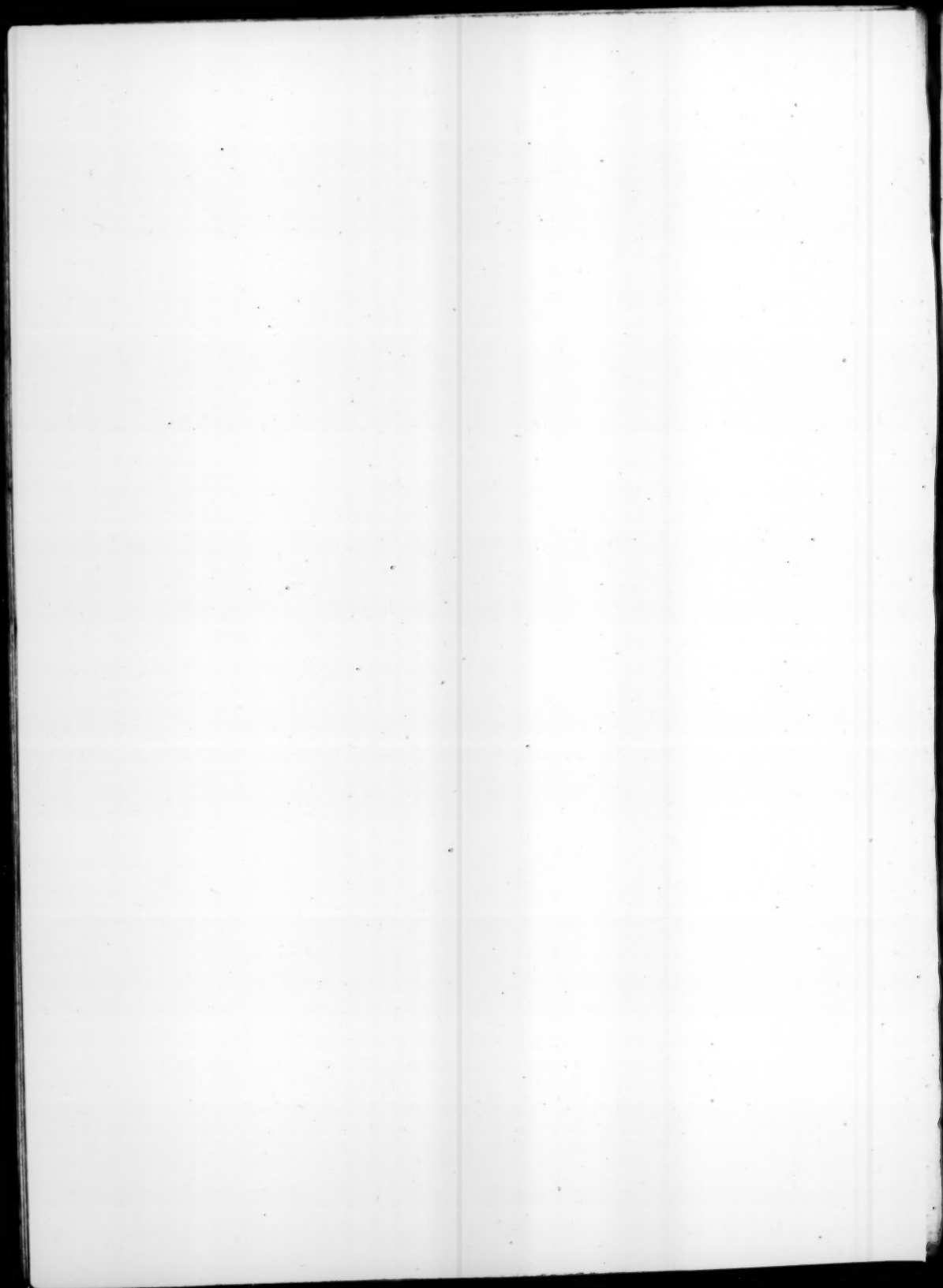
Action of Debt against the heire which pleadeth *riens per descent*, that is, no land descended unto him from his Father.

Affets transito-
ry.

The Plaintife replieth that hee hath Affets in London, and at the *Nisi Prius*, hee giveth in evidence (Affets) that is, sufficient land in Cornewall descended unto him from his Father, a doubt whether this Evidence will maintaine the issue, and whether the Jurors in London can take notice of the same in Cornewall, because they are transitory, *Hil. 10. Eliz. R.*

William Shackbolt was bound by the name of *John Shackbolt*, and an Action was brought upon the same Obligation against *William*, otherwise called *John*, the Defendant pleaded *non est factum*, it is not his Deed, and the matter found by speciall Verdict, adjudged that the Plaintife could not recover upon this Verdict, because his Action ought to bee against *John Shackbolt*, for the Defendant





defendant shall bee estopped upon an Obligation to say that he is *William, Mich. 11. Eliz. R.*

Action of Debt upon Obligation, the Defendant after the hearing of the Obligation imparled, and after pleaded tender of the money at the day and place, and that there was no man there to receive it, and that he was ready to pay; Adjudged a good Plea, and he hath excused the forfeiture of the Obligation by the Plea, and he is not estopped by the Imperlance to pleade (*quod ore preist*) that he is now ready to pay, *Pas. 13. Eliz. R.* *Obligamus nos & utrumque nostrum*, is severall as well as *quemlibet nostrum*, adjudged *per Cur.* 28. H. 8.

Nos & utrumque.

A man bound by Obligation to pay a 100. l. at a day and place certaine, and payeth the money before the day at another place, by the acquaintance he is discharged; but if he plead payment according to the Bond the same day and place, the Jurors are not bound to finde for him, for the truth is contrary, *Pasch. 5. Eliz. Hil. 9. Hen. 7. f. 6. 17. 21.*

Payment at a day and at another place.

Bowles bringeth an action of Debt, for a rent behinde, and declareth that his Tenant for yeares devised unto the Defendant his terme and died, and that the Defendant entred and was possessed, and for the Arrerages he brought his Action, the Defendant Demurred, one exception against the Plaintife was, because he did not alledge that his tenant for yeares (the Devisee) made his Executors, and that the Defendant did enter with their agreement.

Exceptions taken against the Declaration of the Plaintife for debt, insufficient by a Demurre in Law.

Ano-

Another exception was because he did not say by vertue of such a Legacy the Defendant was possessed, and if by any other title more stronger it shall be taken against the Pleador.

Debt due to a man which is *felo in se*, wager of Law upon a Contract.

And therefore not chargeable to pay any rent Debt due unto a man which is *felo in se* upon a Contract is not forfeited unto the King, for then the Partie shal be rebated from his wager of Law, *Pasch. 9. Eli 7.*

Varney in Execution in the Fleete for divers debts, 37. H. 6. as also for fines at the Kings suite, retourned into the Exchequer, caused himself to be indicted for felony, to the intent to confesse the Felony and to have his Clergy, and so to bee out of the temporall Law, and to be burned in the hand, and after to make his Purgation, and also to defraud the Creditor, and upon a *Corpus cum causa*, all was removed into the Kings Bench.

The King perceiving the subtiltie and devise, by Privy Seale commanded the Justices to stay the Arraignement.

Suffer to enjoy without interruption.

Condition of an Obligation was, that if the Obligor suffer the Obligee his Tenant for yeares to enjoy, &c. and that without vexation, trouble, or interruption of him or any other, &c.

A Copyholder hath right to the land, entreth into the land.

Suffer to enjoy.

The Condition of this Obligation was not broken, *per Cur.* for this word (Suffer) is a word passive, and doth not import that he ought to make any Act, yet if he procure disturbance, the Obligation is forfeited, and all the words subsequents

Disturbance procured.

quents depend upon this word, Suffer, *Mich. 9. Eliz. R.*

Johnson bound with two sureties for the payment of 40.l. to be paid at two dayes, and for assurance and saving harmelesse the sureties, by Indenture bargaineth and selleth unto his sureties all his Cattell for 40.l. paid, Provided that if hee discharged and saved harmelesse the sureties of the Bond, &c. the sale of the Cattell should bee void, &c. and it was agreed that he should occupy and use the Cattell, hee failed payment the first day, and after he was *felo in se*, it was awarded in the Star Chamber, that the *Queenes Almoner* should have the Cattell and discharge the sureties, but the Lord *Dier* against them all, that the propertie of the Cattell was in the sureties upon the breach of the Condition, *Pas. 5. M.*

Sale of Cattell conditionall to save harmelesse sureties.

Felo in se.

Almoner.

Property.

Action of Debt upon a Counterbond to save one harmelesse of all Obligations against *Arnold*, the Defendant pleads *non Damnicat*, not damaged, the Plaintife saith that *Arnold* recovered upon a Plaint against him in London, and issue joyned, *Sur nultal Record*, that is, No such Record, and day given to the Plaintife to bring in the Record at his perill, *Mich. 3. Eliz.*

To save harmelesse plead not damaged.

Tenet was bound to *Atkinson* in a 100.l. to the use of *A. G. Widow* with whom hee intended to marry, and he delivered the Obligation to the Widow, saying, This will serve; the woman delivereth the Bond unto *Atkinson*, and after marryeth her, *Tenet* dyeth, action of Debt was brought against the Executors of *Tenet* upon his Bond, and

Bond to the use of a woman.

and adjudged a sufficient Delivery, *Mich. 3. Eliz.*

Bond of heire. Action of Debt was brought upon an Obligation against the heire for the debt of his Ancestor, it is no Plea for him to say, the Executors have Affets, that is, sufficient goods in their hands to pay debts, *per Cur. Capels Case, Mich. 4. Eliz.*

Affets pleaded. Action good against the heire if he have land descended to him in Fee, *Hil. 11. Hen. 7. fo. 12. in the Case of Administration.*

Condition upon Request. *Bickner* bound in a 100.l. to *Long*, the Condition that if *Bickner* should upon request doe all manner of Acts which should be reasonable unto the Counsell of *Long*, to release *Long* for a Bond wherein he was bound to *Bickner*.

Request unreasonable. Request was made to scale a release of all Demaunds unto *Long*, unto one *Martin*, and avereth that there was no other matter betweene them, but speaketh nothing of *Martin*, adjudged request unreasonable, *Mich. 5. Eliz.*

Obligation to deliver possession. *Atkinson* bound to *Biat* in a 100.l. to deliver a key of the doore of a house, and the quiet possession of the same to the Lord Maior of London, to the use of *Biat*, *Atkinson* sealed up the doore of the house, no man being in the possession of it, and delivereth the key of the same to the Maior of London, the Maior being not in sight nor view of the house.

An estranger pretending title, entreth into the house, this was no good delivery of possession by the Law, yet it was found good by verdict of 12. men, and after found in attain, *5. Eliz. R.*

Action

Action of Debt and declareth of 20.l. due unto him upon sale of Wood, and giveth in evidence of 20. Marks, it must be found by verdict for the Defendant as though there were variances in the things sold, *Mich. 5. Eliz.*

Evidence.

Atkinson bound in a 100.l. to *Barnard* to ratifie, confirme, and allow alwayes the estate of *Barnard*, it is no Plea for *Atkinson* to say that he hath ratified and confirmed, &c. for the Confirmation must be pleaded by Deed.

Plea.

Confirmation must be pleaded by Deed.

A woman hath the third part of Land of a terme of yeares delivered unto her by the Sheriffe in and for her Dower, the Tenant for yeares granteth and assigneth all his lands comprised in his Lease unto *Ackfield*, and covenanteth that he hath not made any Act, but the Assignee *Ackfield* may enjoy the same against all men, and was bound by Obligation to performe Covenants; Opinion, that the Obligation was not forfeited for the words that are before, but that the Lessee may enjoy, &c. hath relation to the words that the Lessor hath not made any Act and they are not absolute words, *per Trm. 7. Eliz. R.*

Dower of land in lease.

Enjoy.

A Steward of a Court, or a Bayly may be retained without Deed, and may have Action of Debt for their wages, if they execute their Office, but they cannot have a writ of Annuity without a Deed, *Mich. 8. Eliz.*

Retainment of wages.

Annuity.

Action of Debt for rent reserved upon a Lease of severall parcels of land, the parties were at issue, *Sur non demisit*, that is, that he did not Demise,

Rent upon a Lease.

mise, it was found by Verdict that he demised all, &c. except such a parcell, and of that parcell there was Demise, and the Jury assessed damages, but the Plaintife could not have Judgement, *Pas. 9. Eliz. R.*

Covenants,
good in part
and void in
part.

In one Indenture foure Covenants, and but onely two of them read to the Defendant, and alledged the performance of two Covenants, and demanded Judgement of Action, and doth not plead (*non est factum*) adjudged good, *per Brudenell* and *Fitzherbert* Justices, because the Indenture is his Deed in part, for that the Covenants are severall and not intire; but otherwise the Law is if there were but one intire Covenant.

A Deed rased,
interlined.

But in *Brooke* and *Gollard* Justices contrary, for if an Obligation is single, and it is read to me with a Condition, and if a Deed is rased in part, or after written, or interlined after delivery of the same, all is void, although it is done by a stranger, and where a Deed is in part contrary to Law, and in part not, it is voide in part, and good for the rest.

Conditions
impossible.

And *Pollard* Justice, if I Covenant with you to make a great house in one day, or to goe to Rome in one day, or to over through Westminster Hall, the Deed is void for these Covenants, and good for the rest which are possible to be performed, and so where part of the Covenants are contrary to Law, and some agreeable to Law.

And the like Law is of an Obligation where part of the Condition is contrary to Law, or impossible,

possible, and part of the same is otherwise, for if the Condition is in all against the Law, the Obligation is void, but where the Condition of the Obligation is impossible, there the Condition is void, and the Obligation good, *quod nota*, therefore his opinion was that the Indenture and Covenant void in all for not reading the whole Indenture.

Conditions impossible, Obligations good, Conditions void.

But *Brudenell* and *Fitzherbert* contrary, and *per Fitzherbert*, if I Covenant to enfeoffe you of the Mannor of *Newton Hall*, and to disseise *I. E.* of the Mannor of *D.* this Covenant good in part and void in the rest, because it is against Law.

being bound. A but one of the conditions is void

Covenant, good in part, and void in part.

And if three Obligations are written in one Parchment, and one of them is read to a man unlearned, and he sealeth and delivereth it, this is good for that one part and not for the rest.

And if three men are bound in one Obligation, and they seale the same with one seale, and with one print, that is good against them all, and *Brudenell* Chief Justice of the like opinion, for the Covenants are alike in themselves, as the Case before of the three Obligations written in Parchment.

And *per Brudenell* a great diversity there is where a Deed is severall in it selfe, and where it is intire in it selfe, and agreeth with *Pollard* Justice, that where some Covenants are against the Law, and some Covenants are agreeing with the Law in a Deed there it is good in part, and void in part, and if there is but one joynt Covenant in the Deed all is void.

A Delivery in a Deed with severall Covenants, and one intire Covenant.

A deed good in
part, and voyd
in part.

And if a man is seised of a Mannor and granteth to mee a Rent Charge out of the same by Deed, and another Rent Charge to me out of another Mannor without Deed, it is a good grant of Rent for the first, and void for the other Rent.

A bond good
in part, and
voyd in part.

And if I am bound to a Monke, and to *I. B.* or to a Woman married, and to *I. B.* it is a good bond to *I. B.* but not to the Monke, nor to feme Covert.

Infant.

If an Infant make an Indenture, and at his full age is bound to performe it, he cannot avoid this Indenture.

Infant.

If an Infant selleth a Gelding for 20. l. and at his full age bringeth his action of Debt for his money, he cannot avoid the Contract.

Infant accept
rent at full age.

If an Infant maketh a Lease reserving Rent, if hee accepteth his Rent at his full age, his Lease is good.

In the first and principall Case if all the Indenture is void, then the Obligation is single, but where part is good and part is not good, Obligation is his Deed as unto that which is good, and he is not bound to performe any other Covenants but such as were letten to him, *per Brudenell* Chief Justice.

Writing in
Deed after li-
very, voyd.

And if any thing is written in the Indenture after the Livery of the same, a man is not bound to performe it.

And by *Brudenel* his opinion, if an Obligation is made after the Indenture, it is a good conclusion to say (*non est factum*) the whole Indenture if it commeth into question, 14. H. 8. fo. 25.

Note

Note that if a man delivereth a single Obligation as his Deed, and after a Condition is written thereunto, this is not the Deed of the Obligor, or rasing or interlining the Condition avoideth the Deed as rasing or interlyning the Bond, *per Cur.* 36.H.6.*fo.5.*

Rasing or interlining in the Condition or Obligation void.

A man cannot avoid a Statute Merchant, Obligation, Release, or any such like against the party himselfe named in the same by averment, if a delivery of the same upon Condition, except he can shew a writing of the Condition; But the Law is otherwise in an Action of Detinue against a stranger where the thing was delivered in even hand, for this is averrable, but contrary against the party himselfe. 43.Ed.3.*fo.27.*

Obligation delivered upon Condition.

In an Action of debt the Defendant pleaded acquittance which was rased in the date, and upon a demurre in Law, the Plaintiff recovered. 44.Ed.3.*fo.43.*

Rasing.

If a man is bound to me to carry a summe of money to *Dunmow*, and he is robbed in his journey, hee is excused in the Obligation, *per Kirton Justice.* 40.Ed.3.*fo.36.*

Robbed of his money.

Action of debt upon an Obligation upon Condition, That if the Obligee delivered a Bull unto the Obligor at such a day, then the Obligation to be good, or otherwise void, And *per Cur.* the Plaintife must shew in his declaration that he hath delivered the Bull, because the Condition is of his part to be done to make the Obligation good, *quod nota.* 26.H.6.*fo.1.*

Condition to be performed by the Obligee.

If Land is letten by Indenture reserving Rent
L 3 unto

Two bound,
the one sealeth
the other not.

unto two men, and one of them sealeth the Indenture and other not, and in my Indenture it is contained; That if certaine conditions be not performed that then the Defendant did bind himselfe to pay 100.l. he which did not seale the Indenture is not bound to pay the 100.l. although he agreed to the lease; But otherwise it is upon Rent reserved upon a lease, although one of them did not seale it, he shall be charged to pay the Rent. 45.Ed.3.fol.3.

Obligation
must be cancelled
upon recovery of the
same.

Note that if a man recover upon an Obligation, the Obligation must be cancelled. 11.H.4.fol.73.

A single Obligation, the Obligor is not bound to pay the Obligee with acquittance. But otherwise it is upon an Obligation with a Condition, for there the Obligee is not bound to deliver acquittance, for in this case he may aver payment. 41.E.3.fol.25.

Obligation
with false Latin,
or writing.

Obligation made with false writing, as *viginti libris*, and the Writ is *Viginti libris*; It is good, because it hath sufficient intentment for *Willium & Willielmus & Thomas & Thomas* is all one, and in Latin a double W. & a single V. is all one. 9.H.6.fol.7.

Tender of money.

If I am bound in a 100.l. and the Obligee granteth to me by Indenture that if I doe pay to him 10.l. that then the Obligation shall be void, If I tender the 10.l. I am discharged from the Obligation, and from the 100.l. Hil.33.H.6.2.per *Priscot & Littleton* Justices.

If no day is limited in an Obligation when the money

money shall be paid, it must be paid incontinently and when it is required. 39. E. 3. fo. 12.

Place, day, not limited for payment, Bound not naming Executors.

Note that if a man is bound and his Executors not named in the Bond, but the Executors shall pay the debt, and for the ordinary shall doe if hee dieth intestate. 45. E. 3. fo. 17.

Action upon an Obligation of 10. l. the Defendant said that it was for Tithes sold him, and that I. G. hath recovered the Tithes by an ancient right, adjudged a good plea. 21. E. 3. fo. 12. Look in *Contracts*.

Tithes sold recovery by an ancient title pleaded.

Action of debt upon an Obligation, and the Deed, and the Seale of the same were severed and were sewed and glewed to the Deed, the Obligation void. *per Cur.* 11. H. 4. 7. H. 6. fo. 18.

Seale of an Obligation sealed, and broke, sewed and glewed on.

If twenty persons are named in a Deed, if they all seale with one seale the Deed is good, and one print in wax. 8. H. 4. fo. 8. 22. H. 6. fo. 3. & 4.

Sealing by many with one seale.

In debt upon an Obligation, the Defendant pleaded an acquittance which was found against him whereby the Plaintife recovered upon the Obligation, The Obligation must be cancelled; But hanging the issue the Obligation must be delivered to the Plaintife, *quod nota*; But upon a recovery it must be cancelled for otherwise it may another time be recovered. 11. H. 4. fo. 73.

Acquittance pleaded Obligation cancelled.

A Deed may take effect by a second delivery where it did take no effect at the first delivery; As if a man granteth to me a Rent Charge out of the Mannor of Dunmow who hath no right therein at the time of my Rent Charge granted. And after he purchaseth the Mannor it selfe and

Awriting twice delivered.

then taketh my Deed and maketh a second delivery of the same, this is good; And if I deliver a release to you of Land, in the which you have no right, and after you purchase the Land, and then I make to you a second delivery of my release of my right in this Land, this is good; But otherwise it is if my Deed taketh effect once after the delivery.

As if an Infant, or a man in prison by menacing is bound in Obligation and deliver the same as his Deed, and after the Infant being of full age, or the man coming out of prison and at large receive the Obligations againe as their Deed; This delivery is void, for it did take effect at first delivery, and their Deeds were not void but voidable.

1. H. 7. fo. 14. *Vauisor* 7. 8. fo. 4.

Name and
surname in an
Obligation.

I am bound by the name of *I. Kinwelmarsh*, I may not say that my name is *R. Kinwelmarsh*, for the proper names are materiall, and the surnames, for if I am bound by the name of *Robert* without any surname, or by surname and without my proper name, as leaving out *Kinwelmarsh*, leaving out *Robert*, or by the name of *Robert* leaving out *Kinwelmarsh*; It is void. 9. E. 4. fo. 29. per *Needham* Justice.

Action must
be brought by
the same name
he is bound,
although a
wrong name.

W. Shockbolt was bound in an Obligation by the name of *I. Shockbolt*, and an action of debt was brought against *William*, alias *John*: the Defendant pleaded, *non est factum*, and the matter found by speciall verdict, adjudged; That the Plaintife should recover nothing by this verdict, for the action should be brought against *John*, and not

not against *William*, and the Defendant shall bee stopped by an Obligation to say that *William*.
Mich. 11. Eliz. Dyer 27.9.

I. Burges releaseth all his right, &c. by the name of *I. Burgesse*, adjudged to be good. 22. *H. 6. fo. 48.*

In an action of debt for the arrerages of the Annuity, if a man plead *nihil debet*, or payment that is not good acquittance, but such a plea is good in a Specialty or in a Levie by distresse in the Mannor of *G.* in the same Countie, for in these cases pleading *& issuit Lindoet* is good: and if a man is bound in an Obligation of 20. l. for payment of 10. l. at a certaine day, payment of the 10. l. at such a place is good pleading without acquittance, but where a man is bound in a single Obligation, it cannot be discharged but by acquittance; Note this diversity. 5. *E. 4. fo. 5.*

Single Obligation not voided without acquittance.

In debt if judgement do passe for the Plaintife, this is a good Barre in any Court after in any action brought for the same, *per Chock Justice, quod nota. 37. H. 6. fo. 13.*

A judgement a barre, if action is brought for the same in another Court.

Action of debt upon an Obligation the Defendant pleaded a release bearing date after the Obligation, and the Plaintife averreth the Obligation was delivered after the release delivered, and the issue was taken whether the Obligation was delivered before the release or after. 7. *H. 4. fol. 14.*

Obligation, Release pleaded, delivery.

If a Tenant for years refuseth to pay his Rent, except the Landlord will give him acquittance, and maketh Rescous, and the Landlord bringeth his assesse against his Tenant for this Rent for this

Tenant for years, cannot withhold his rent for lacke of acquittance.

Rescous

Rescous, he shall recover. And so note that a Lessee or Tenant cannot detain his Rent untill he hath acquittance, but paiement of money by a single Obligation requireth an acquittance, but in an action of debt upon an Obligation with a condition, or for Rent upon a Lease there need no acquittance for paiement pleaded; Or the Rent levied by distresse is a good plea; but a man cannot discharge a specialty without specialty by pleading. 8. *Afsif. P.4.3.*

Note that a Deed bearing date beyond the Sea, and there made, may be sued here in *England*, if it beareth date at large, and in no place certain, *Quod nota. 21 Ed.4. fol.74. Afsif. P.4.3.*

A Deed making no mention of sealing.
Sigillum lacking *meum*.

Covenants after sealing void.

A Deed was made in *cujus rei testimonium*, lacking this word (*meum*) in *sigillum apposui*, yet the Deed is good if he doth deliver it, although he seal it with the seal of another man: And that where no mention is made of sealing, it is not good although it be sealed, indeed if these words *Sigillum apposui* do want, and words or covenants after *Sigillum apposui* are void, and are not part of the Deed, although they are written before, then sealing and delivery. *per Cur. per 1 Mar. 21. E.4. fol. 8.*

Obligation not avoided by a grant of a discharge of the same, but a Writ of Covenant he may have.

Debt upon an Obligation, the Defendant saith, That after the Obligation was made and delivered, the Plaintife by his Deed doth grant unto the Defendant that he should not be sued nor vexed by this Obligation before the feast, &c. And if he were impleaded, that then he should plead this Deed as an acquittance; and that the Obligation should

should be void, adjudged no plea, *per Cur.* to avoid the Obligation, but the Defendant must have his remedy by a Writ of Covenant, *Trin. 27. H. 8. fo. 19.*

For if I grant unto my Tenant, that I shall not distrain him for my Rent, and after I make avowry, he cannot plead this in Bar against me, for by this grant my Rent is not determined: And especially the thing for which such grant was made, had his beginning before such a grant was made. As where a lease is made without impeachment of waste, he may plead this by way of Bar.

Lease without
impeachment
of Waste.

But if the grant be made that he shall not be impeached of waste, which grant made after the Lease is made, he shall not plead this by way of Bar, but shall have his action of covenant.

Action of Co-
venant.

If a man release his right, if it be but for one hour, or one day, all his right is gone for ever. *Trin. 27. H. 8. fo. 19. Trin. 21. H. 7. fo. 24.*

Action of Debt, the Defendant saith, that the condition was, that if he carried all the wood and bushes out of the Land, which the Plaintife had made the Defendant a Lease of, &c. that then, &c. and sheweth that he had carried all the bushes and wood, generally adjudged a good plea in the affirmative, but if he reply in the negative, he must specially shew all the Cart loads that he had carried, all the bushes and wood generally, and the number of loads, *per Cur.*

But if I be bound to deliver all the money in my purse to you, or to enfeoffe you of all the Lands my Father died seised of; If action be brought.

brought against me, I must set down the certainty of all, because they are and be in my knowledge, *per Cur. per Brook Justice*, 12.H.8.

In an action of Debt upon an Obligation made without any date, the Plaintife must shew the day and the place certain where the Obligation was made, otherwise the writ will abate, *Mich. 3.H.4. fol.8.*

If the Obligation be made with false Latin, as *Iohannes* for *Iohanna*, yet neverthelesse the Obligation is good, *per Cur. 2 H.4. fol.8.*

Adjudged *per totam Curiam* that an Obligation made by a married woman, and by another man is void against the wife, yet good against the other man; And if release be made of all actions unto this woman covert, it will not extinct the Obligation; But to an Infant bound with another man, the Law is otherwise, *Mich. 1 H. 5. 12. & 13. H. 4.*

Obligation is, that if he pay ten pound to the Plaintife, such a day, and at such a place, that then the Obligation to be void, at the which day the Defendant commeth to the place, and ready is to pay, and none commeth to receive the money, yet neverthelesse the Defendant must plead, that he is yet ready to pay and tender the money in Court, & not in the place nominated in the Obligation, *per Cur.* And if the Plaintife refuse the money being tendred, yet he may have an action upon the Obligation for the Debt, although the penalty be lost, *Pas. 7.E.4. fo. 3,4.*

Debt for not performing of Covenants of an Indenture

Indenture upon an Obligation, the Defendant saith that he was a Lay man not literated, and saith that the Indenture was read but as two Covenants contained in the same, whereas there were many Covenants in the said Indenture.

Pleading to be a lay man, and not lettered, to avoyd an Obligation.

Argued that one Deed may be good in part, and void in part; As if I be bound by Obligation to enfeoffe you of the Mannor of *Dunmow*, and also to disseise *Atkinson* of the Mannor of *Martelles*: This Obligation is good in part, and evill in part.

A Deed or Obligation good in part, and voyd in part.

If I am bound in three Obligations severally in one Bond, and I seale it without seale, I being a man not lettered, the Obligation is read unto me as one, It is good for this one, and void for the rest.

Condition of an Obligation good in part, and voyd in part.

Brudenell Justice, if Covenants in an Indenture or in a Condition are severall, and some of them are against the Law, and some are impossible, and some agreeing with the Law, those that are agreeing with the Law are good and to be performed, but the other are void and not to be performed.

Covenants severall in Indentures, some good, some not good.

But if there is but joynt Covenant in the condition, or in the Indenture which is against the Law, then all is void.

And if but one, then all is voyd.

And if there be many Covenants in an Indenture, if one or many be performed, and some not, I may have an action of Covenant of any of the Covenants which be performed, as I will, which is not performed, because the Deed and the Covenants are severall.

Covenants in Indentures severall.

But

A Deed or Condition joynt & not severall against the Law, is all void.

But if the Deed and Covenant bee joynt and not severall and is against the Law, then all is void, as if an Obligation is made and sealed for the payment of ten pounds, and other 10.l. is put in the Obligation, all is void where the Obligation is single, and a Condition is after written thereto, or where the Condition is altered or changed in part, these all are void in Law, and to these the Obligor may pleade, *non est factum*, Pas. 14. H. 8. fol. 30.

A Deed good in part, and against Law in part.

If a Deed be severall, and some part thereof good, and some part thereof against the Law, or impossible, the Deed or Condition is in part good and in part not good, and void, the Defendant must in these specially pleade and conclude and demand Judgement if Action, but if the Deed, Condition, or Covenant be joynt and not severall and against the Law impossible, the Defendant must conclude and pleade that it is not his Deed.

Pleading a joynt Deed that is voyd.

If a Deed be once good and by matter of *Ex post facto* made void, the Defendant must shew the speciall matter, and demand Judgement if Action, *per Brooke Justice*, 14. H. 8. fo. 24.

If parcell of a Condition of an Obligation bee against Law, or impossible, and after be agreeing to the Law and possible, these agreeing to the Law and possible in the same Condition are good and must be performed.

Condition against Law, Obligation void.

But if all the Condition is against the Law the Obligation is all void.

Condition impossible,

But if all the Conditions bee impossible, the Con-

Conditions are void and the Obligation good,
per Pollard Justice, 8.E.4. & 2.E.4. fo. 3.

Obligation cannot be voyded not in matter of Faire, and by matter in writing, as if an action of Debt be brought against an Apprentice which is bound to serve his Master 7. yeares, if he pleade that his Master discharged him, this is no good plea except he hath a writing from his Master to discharge, which he must pleade, *Pasch. 1. H. 7. fol. 14.*

Condition a-
voided without
writing, by
matter of fait.

But if I bee bound by Obligation to a woman, and after I marry and take her to wife, Obligation void.

If I be bound to a Villaine, and after doe purchase the Mannor unto which he is regardant, Obligation void.

Statute Mer-
chant.

If three men are bound to me by Obligation, and I breake off one of the seals, the Obligation is void.

If I am bound in a Statute Merchant, if the Conusee purchase parcell of the land of me, and I sell the rest of the land away, he cannot extend upon this land because he hath purchase parcell.

Disagreement
of the husband.

If I enfeoffe a woman covert of land, disagreement of her Husband maketh the feoffement void, which disagreement is but matter in Faire.

If Rent be granted unto me, if I surrender the Rent and the Deed, the Rent is extinct, and yet the Surrender is but matter of Faire, and no writing, *Pas. 1. H. 7. fo. 17.*

Surrender of
Rent.

Johnson bound to performe certain Covenants, if the Covenants be in the Affirmative, and the
per-

Pleading Con-
ditions.

Conditions
pleaded.

performance of the same bee it matter of Faite, *Johnson* must recite the Conditions and pleade generall that he hath performed all the Covenants, and never shew the speciall performance of them; as *Johnson* bound in 20. l. upon condition that he shall enfeoffe the Obligee of the Mannor of Dale, and that he shall give the Obligee a Gelding, if A^ction bee brought against him hee may pleade and shew the Conditions, and shew *quod implevit omnes conditiones*, and not specially to shew the performance, as to say that he hath enfeoffed him of the Mannor of Dale, and that he did give him the Gelding such a day.

Affirmative.

But if the Condition be in the Affirmative, and the performance thereof must be tried by matter of Record, there he must plead and shew specially the Record.

Negative.

But if the Condition be in the Negative, as if *Johnson* is bound in the Obligation with Condition that he shall not goe to London before such a day, or that hee shall not enter into such a Mannor before such a day, he must answer in the Negative and say, especially that he did not go to London, and that he did not enter the Mannor before such a day.

Affirmative,
Dis-junctive.

And if the Condition be in the Affirmative and Dis-junctive, he must pleade and shew the performance thereof specially that he hath performed the one part or the other.

Affirmative.

And if the Condition bee in the Affirmative, and that the Obligee ought to doe an A^ct in the performance of this Condition, the Obligee must shew

shew it especially, as if I be bound to infeoffe the Mannor of Dale unto two such men as the Oblige shall assigne me, I may affirme that the Oblige did not assigne any to receive any estate, *Hil.* 10.H.7.*fo.*13. Negative.

And if I am bound upon Condition which is in the affirmative the which implieth a Negative, there I must plead and answer in the Negative, as if I am bound upon Condition that I shall keepe or save harmelesse *Johnson*, &c. which once being undamaged by me, *H. Atkinson*, this Condition in the Affirmative implieth a Negative, and therefore must plead in this case that the same *Atkinson* did not damnifie *Johnson* Plaintife, *Hil.* 10.H.7.*fo.*13.

If a man be bound to make or doe any thing for another, he is bound by implication to doe all and every Act which is necessary and convenient for the performance thereof, as if I be bound by Obligation with Condition to levie a fine unto another, I must beare all the charges and not the Conusee, except it be contrary and otherwise by Covenant expressed.

If I be bound to mow or reape with you all a weeke, I am bound to finde all necessary Instruments and tooles for such a labour.

If I be bound to carry your corne into your Barne, and before the day and time the Barne is burned or fallen downe, by the opinion of *Brian* Justice the Obligation was discharged; but *Keble* Serjeant opinion contrary, and said, that although the Barne be decayed, yet the Condition must be

Plea of payment.

M

per-

performed on the ground where the Barne stood before; For if I be bound to pay 20.l. in *Westminster Hall*, &c. and before the day the place is fallen downe, I cannot be excused thereby, but I must pay it upon the ground, &c. But if the Condition cannot be performed, then the party is excused; As if I be bound to pay you 20.l. upon London Bridge, &c. And before the day the Bridge is broken downe, I am discharged and excused, for the Condition can not be performed, *Hil. 10. H. 7. fol. 13.*

Payment and
request traver-
sable.

A Condition of an Obligation depending upon two points, *viz.* on payment and request, both and either of them are traversable, and will make a good issue, and either of them goe in discharge of the Obligation, *per Keble and Wood Serjeants Trin. 4. H. 7. fo. 13.*

Condition
pleaded, the
Affirmative.

And their opinions that there is a diversity to plead a Condition in the *Affirmative*, or in the *Negative*, in the performance of a Condition, For if the plea be in the *Affirmative*, he must plead certainly and how the Condition is performed and done.

Negative.

But if in the *Negative*, he may plead generally and traverse the thing which he ought not to do, as if a man be bound to keepe another from such damage in such a suite, if he plead in the *Affirmative*, hee must plead especially, how he had discharged him, as by release, payment, or, &c.

But if he plead in the *Negative*, he neede not to plead, nor alleadge how and what manner, but generally that the Plaintife is not damified.

If

If a man bee bound, &c. to deliver all the evidence, &c. hee shall not plead the certainty, but plead generally that hee hath delivered all. &c.

Required

If a man bee bound to infeoffe the Obligee of all his Land which he hath by descent, when he is required he must plead that hee was never required.

A man bound to obey and stand to the Arbitrement of *I. Atkinson*, if he plead in the *Negative* he must plead no such Arbitrement generally, but if he plead that he hath performed the Arbitrement, he must specially alleadge that the Arbitrement was. *Trin. 4. H. 7. fol. 13. & 5. H. 7. fol. 8.* in Action of debt.

Arbitrement pleaded.

Atkinson is bound to deliver all the evidence concerning such a Mannor; He may plead that he hath delivered all, and not shew the certainty of them but he must plead that they are all. *per Brian Justice*, But *Iay* opinion hee must shew the certainty and so used, but *Brian* that the other was good.

Bound to deliver Evidences.

For if the Plaintiffe replieth rejoyne the issue shall come unto the certainty shewne by the Plaintiffe, and not certainty shewne by the Defendant. *per Cur. Hil. 6. H. 7. fol. 13.*

Pleading certainty.

Action of debt upon an Obligation endorfed with such a Condition that the Obligor ought to performe all the Covenants in the Indentures made betweene the Obligee and him, and saith that these were the Conditions between him and them in the Indenture, and doth shew them what they were.

Covenants of Indenture.

Indenture re-
quired to be
seene

The Defendant demanded the sight of the Indenture, adjudged upon a demurre that he should not, for the action was not contained of the Indenture, no ground of action thereon, and the demand nothing materiall, for if the Indenture be rased or interlined, it is not materiall. *Mich. 6. H. 7. fol. 12.*

Acceptance of
the parcell of
the sum pleaded,
is abatement of the
Writ hanging
the Writ.

Action of debt upon an Obligation, the Obligor pleads that the Obligee the Plaintiffe hath received parcell of the maine summe, hanging the Writ: opinion of the Court, that the plea was good to abate the Writ, but not to be a Barre, but were some of opinion that this plea was a bar for ever; for this parcell received hanging the Writ, for in *Mich. 25. H. 6.* It was the opinion of *Litleton*, that this plea was a barre, but in *21. 6. 4.* opinion, no barre but a good plea to abate the Writ.

But opinion of the Court was that this plea receiving parcell of the debt, pleaded after the last continuance was not good. *Trin. 5. H. 7. fol. ult.* And *Trin. 15. H. 7.* Adjudged no plea.

Executions against
the heires of the
Executors.

Debt and damages recovered, The Defendant dieth before Execution, a *Scire facias* doth issue against the heire and his Land, Tenants which were in the Defendant, the day of Judgment; And hereupon an *Elegit* did passe like as it were upon a Recognisance, and it seemed unto the Court, that a *Scire facias* needed not first to be directed unto the Executors, no more then if it were upon a Recognisance, by the Statute of *Westminster 2. cap. 18.* As well that goods as the Lands

lands are lyable upon an *Elegit*, but whether hee may wave and not take Execution of the Executors, but onely on the heire, the Court did doubt.

4. *Eliz. Dyer* 208. *Owins* case.

Harrison being of full age bringeth an *Audita querela* in the Chancery, to avoid a Recognisance in nature of a Statute of the Staple made by him within age; But because his age must be tried by the inspection of the Court, which now cannot be, the *audita Querela* cannot do him any good, and so it is if he dieth within age. *Dyer* 232.

Recognisance
by an infant.
Audita querela.

A man is bound in a Statute Merchant, the Conusee maketh his Executors and dieth, who sue Execution against the Conisor, and the Sheriffe returneth the Conisor to be dead; And also an Inquisition of the extent of the Mannor of *Bampfseed*, the which the Conisor was seised of at the time of Recognisance made: The opinion of the Court was; That the Executors, or the Executors of the Executors of the Conisee may have a reextent although the *Liberate* were executed: So that they have not received any profit of the Mannor of *Bampfseed*, for it is necessary that the estate of the Land should be first found for the Conisor being dead, as the Sheriffe hath retourned, there is no Land of his lyable to Execution, but Lands holden in fee simple, and no intangled Lands, nor Lands holden for life. *Pasc.* 13. *El. Dyer*. 299.

Puttenham made a Lease to his youngest Brother who knowledged a Statute Merchant with Indentures of Defeasance to performe covenants,

Audita querela
to avoid an ex-
tent.

Puttenham the Conusee sueth his execution, and his brother Tenant for years, and Conusor doth sue for his help an *Audita querela* shewing his Indentures of defeasance, alledging that he had performed all his Covenants as he was bound to do, whereupon Processe issued forth against his brother the Conusee, and he appeareth and sheweth the Indenture, and the breach of a Covenant, and prayeth Execution of the same Statute, and hereupon they were at issue; And the Jury found for the Conusee; And the Conusor in arrest of judgment of the Court was that the insufficiency of the declaration is no help to him by the Statute, whereupon judgment was given that the Conusee should have execution of the Statute against the Conusor his brother and his Tenant for yeares, for breaking of Covenants, *Dier Mich. Eliz. 19.*

Action of debt
for damages
recovered.

Action of debt was brought for damages recovered, the Defendant saith that the Plaintife hath an *Elegit* served, but speaketh nothing of the return thereof, and yet good, for it is in his election and choyce to make record of his execution, *Pasch. 13. Eliz. Dier 299.*

Land conveyed
to avoid execution.

Action of Debt was brought upon an Obligation, the Defendant pleading condition performed, they were at issue upon a certain point: And before triall the Defendant knowing that the verdict would passe against him, he conveyed all his Land unto another man upon condition to pay him twenty shillings yearly, and yet did take the profits continually; And the Plaintife did sue an *Elegit* to have the moiety of his Land to be extended:

ded: And the Sheriffe retourned that he and the Jury that should passe thereon were in doubt whether they should extend the Land or not, and prayed the aide of the discretion of the Justices, who judged that the extent was liable. *Dier. 295.*

And a gift of goods after judgement to avoid execution of the same goods, 22 *Affis. 72. R. 3. 50. E. 3.* Gift of goods to avoid execution.

Upon an *Exigent* after judgement, the Defendant cannot appear *gratis*, and plead a release of executions, but he may have an *Audita querela*, he himself being at large may appear *gratis*, to answer the *Exigent*, *Trin. 11. Eliz. Dier 285.* Exigent after Judgement.

Upon a *Scire facias* in the Chancery to have execution of a Recognisance; The Defendant pleaded a writing of defeasance to avoid the Execution, which was dated before the Recognisance, but delivered after his deed; but nevertheless Execution was awarded against him. Whereupon the Defendant did bring his Writ of error in the Kings Bench, and had the judgement reversed and discharged. *Dier 315.* Execution upon a Recognisance reversed by a Writ of Error.

If a Statute Merchant or Staple be made one unto another, and the same indifferently delivered over to a stranger to be delivered over to the Conussee upon certain conditions to be performed, and after the stranger delivereth the Statute to the Conussee before the Conditions be performed, the Conusor shall have his *Audita Querela*. A Statute delivered to a stranger to be delivered to the Conussee upon Condition.

If a man be bound in a Statute, &c. and Indentures of defeasance are made to avoid the Statute, & after the Recognizance do take the Recognizance. Audita querela in discharge of Execution.

for and imprison and taketh away the Indentures of defeasance from him, the Recognizant shall be holpen by his *Audita Querela*, if the Conisee sueth Execution.

Audita querela
to discharge
execution.

And if the Recognizee doth sue Execution upon the Statute contrary to the form of the Indentures of defeasance, he may have his writ of *Audita Querela* against the Recognisor, and the heir of the Recognisor may sue an *Audita Querela*, if he hath matter in a writing to discharge the Execution.

Execution.

In execution
the doores or
walls must not
be broken, ex-
cept by the
King.

IF Proceſſe be brought for the King, and the Kings Officer commeth to make execution of damages, &c. he may break open the doores and walls of the house, if they will not deliver the keyes, for no man must disturb the Minister of the King in executing execution for the King.

Execution, or
extent of parcel
of land in name
of all.

If a man do sue a Statute Merchant of parcell of the Lands of the Conisor in the name of all his Lands, he shall never extend on the rest of the Lands, *Mish. 22. E. 3. fol. 14.*

Elegit retourn-
ed, no *Capias*
after.

If a man do pray to have an *Elegit*, to have the moiety or one half of his Lands or Tenements in execution, and the Sheriffe retourned that he had no Lands, whereupon he prayed a *Capias* to arrest the party; but the Court would not grant it; But if the Conisee, &c. would tarry till lands did come to the Defendant, or goods, then, &c.

But

But now he could not have a *Capias*, nor a *Fieri facias*; And the cause that the entry in the roll is, That he hath chosen his execution of the moiety of his Lands, the which he must stand to, because it is an execution in the highest degree, *Mich. 30. Ed. 3. 24.*

If three men are bound unto me in a Statute Merchant, and every one of them by themselves, *Quemlibet eorum per se*, I may sue execution against one of them onely, or against them all at my pleasure.

And in a Statute, & *quemlibet eorum per se.*

But if I sue execution against two of them, they shall have an *Audita querela*, against me, for I ought to sue all joyntly, or otherwise one of them for all. And the like is an Obligation made by three, *Es quemlibet eorum.*

Execution against two of them, *Audita querela.*

And I may have an intire *Precipe* against all three, or otherwise severall *Precipes*; And upon *Precipe* against all, I shall have execution against all, and upon severall *Precipes* then no execution, but against one of them, *Abridg. in Execution.*

A *Precipe* against all three, or severall *Precipes* against all

If a man recover in a Court Baron, that in the Court have no power to make execution unto the Plaintife of the goods of the Defendant; but after judgement the goods of the Defendant may be distrained, and retain the goods in safeguard in their hands untill the Defendant hath satisfied the Plaintife, *per Cur. Abridgement in execution. 1 Pasf. 4. H. 6. fol. 17.*

Execution in a Court Baron.

But they must not be sold to pay the Plaintife, *22. B. Afis. 72.*

But the use in divers Manours is that the goods are *Lerari facias.*

are praised and Execution made of them by a *Levari facias* by the Bayliffe, and the Bayliffe cannot sell the goods to doe Execution but by custome.

Terme of years delivered in Execution by Elegit.

A man sueth an Elegit, and had a terme of yeares delivered unto him in Execution, which the Defendant had in possession as a Chattel, and adjudged good.

No Distresse for rent for Dower before Execution.

A woman recovering damages in a Writ of Dower, she cannot have Execution of these damages recovered by a *Capias ad satisfaciend.* because the *Capias* was not in the originall, 11.H.7. fo.5.2.H.4.fo.7.

And a woman which recovereth in Dower she cannot distraine for rent, &c. before Execution, and he may give her possession and seisin by clod of the ground, or by a handfull of grasse, or by the delivery of the beasts of the ground to her, but shee must not drive the cattell from the ground but take seisin by them and leave them there, 4.E. 3.fo.21.22.

Cattell demised not to be in Execution.

If a man letteth to farme by the yeare, Oxen and cattell, and after the Lessee for yeares is condemned in an action of Debt, these cattell and Oxen demised during the terme, cannot nor shall not be taken in Execution for this Debt, 22.E.4. fo.10.

An Officer must not breake the doores, nor chests of any man, &c. to take the goods in Execution by a *Fieri facias*, or *Levari facias*, for if he do, an action of Trespasse is to be brought against him onely for the breaking of the doore or chest, 18.Ed.4.

In

In an action of Debt where three are bound jointly and severally, and hath three severall judgements, if Execution be had against one, the other may have a *Supersedeas*, but in an action of Trespasse brought against three, Execution against one is not sufficient to discharge the other, and the like Law is in a joint Debt, 4.E.4.fo.29.

Executio, three bound jointly and severally.

Two men are bound in an Obligation jointly and severally, if one of them be sued, and his body be taken by a *Capias ad satisfaciend.* yet nevertheless the Creditor may take the other, but if the Creditor be satisfied by the first that was in Execution, the other may pleade this satisfaction and be discharged, 29.H.8. titulo Exec. b. 132.

Satisfaction
Capias ad satisfaciend.

If a man be condemned in an action of Debt, and the Sheriffe hath him in Execution by a *Capias ad satisfaciend.* by arresting him, although the Sheriffes doth not retourne the Writ, an Action of false imprisonment is not to be brought against the Sheriffe for not making retourne of the Writ, for the Writ of *Capias ad satisfaciend.* is not as other *Capias*, that is, *Ita ut habeas corpus ejus hic, &c.*

Difference betweene a *Capias ad satisfaciend.* and another *Capias.*

For in every *Capias ad satisfaciend.* the Judgment is given before, and it is but to take Execution of the party, in which no answer nor retourne availeth, 24f.21.H.7.fo.13.

But if the Bayliffe of the Sheriffe arresteth a man by his warrant sent unto him by the Sheriffe, and the Sheriffe retourneth *non est inventus*, the Bayliffe shall bee punished by an Action of false imprisonment by the party arrested, for it was his

The Bayliffe not retourning his Writ upon arresting a man.

his folly that he did arrest a man by his Masters warrant and would not retourne to his Master what he had done, *per Fromick Justice, Mich. 13. H. 7. fo. 2. Pas. 21. H. 7. fo. 23.*

Bayliffe pursue
his Authority.

A *Cepi corpus*
recovered.

For the Bayliffe of the Sheriffe must pursue the authority of his warrant, or else his warrant cannot excuse him, but otherwise it is of a Bayliffe of a Franchise, for he cannot retourne a Writ, but he is bound to make notice to the Sheriffe, and the Sheriffe doth not retourne the writ, the Bayliffe is excused because he hath executed his office upon a *Cepi Corpus*.

If the Bayliffe of a Franchise doth arrest a man by vertue of a Warrant directed to him by the Sheriffe, and after the Sheriffe retourne *non est inventus*, the Bayliffe shall be discharged in an Action of false imprisonment brought against him by whom he was arrested, because he is not the Sheriffes Bayliffe, but Bayliffe to the King, or to some other Lord, but if the Bayliffe of a Sheriffe arrest a man by his Masters Warrant and doth not retourne the same to his Master, whereupon his Master retourneth *non est inventus*, the Bayliffe of the Sheriffe shall bee punished by false Imprisonment, *ut antea*.

Action of false
imprisonment
against the Bay-
liffe for arre-
sting.

If a Bayliffe be arrested by an Action of false imprisonment, if he pleade that he arrested the Plaintife by vertue of a warrant from the Sheriffe directed unto him, and that he hath retourned unto his Master a *Cepi corpus*, or saith upon the arresting he carrieth the prisoner to the prison of the Sheriff he shall not be punished in an Action of false imprisonment.

If

If the Bayliffe of a Franchise retourne a Warrant directed to him by the Sheriffe, which retourne is not sufficient in Law, and the Sheriffe doth make the very same retourne, the Sheriffe shall be amerced, not the Bayliffe, for the Sheriffe is bound to take notice of the Law to make a sufficient retourne, but otherwise it is if the retourne be sufficient in the Law.

Bayliffe of a Franchise, retourne of a warrant not sufficient.

As upon a *Capias* the Sheriffe retourneth *mandavi Balio & qui mihi respondit quod cepit corpus*, and at the day he doth not bring in the body, the Bayliffe shall be amerced and not the Sheriffe, and a Distresse shall issue to the Sheriffe to distraine the Bayliffe to bring in the body into the Court; but if the retourne is *Mandavi Balio & qui mihi respondit quod executores predicti testamenti non habent bona aliqua testatoris*, which retourn is contrary to the verdict or contrary to that which was confessed, the Sheriffe shall bee amerced if hee doth not amend his retourne, *Mich. 3. H. 7. fol. 11.*

Accepi corpus retourned over the body not brought in.

A retourne contrary to the verdict or confession.

If a man be condemned in an action of Trespass or in Debt upon an Obligation, and denieth his Deed at the suite of the party, and after taken and arrested at the Kings suite for his fine, for his false Plea, and in prison, and the Jaylor suffereth him to escape, the party shall have an action of Debt against the Jaylor for his condemnation, and yet hee was not committed to prison at his suite, but at the Kings suite, because the King was intituled to that by the partie, but after the yeare ended not, for the Law doth intend that the party

A man in Execution and in prison, Jaylor suffereth him to escape.

A retourne of
the Sheriffe of
Cattle irreplegi-
able.

is agreed with him which is condemned, and therefore after the yeare and day before he can have Judgement and execution he must first have a *Scire facias* against the party condemned.

A retourne of the Sheriffe of cattle irreplegi-
able is no satisfaction to the party; But it is a restraint of the cattle till the party is satisfied. 33. H. 6. f. 47. But now the Statute giveth a Writ to inquire damages: *looke in Replegiare.*

If the Executor recovereth debt, &c. and dieth, and the Ordinary committeth administration to another, he must sue Execution, as an Administrator of the Executor and not as Administrator of the first Testator, *per Fitzh. cleerely. 26. H. 8. fo. 7.*

Note that an action of debt may be of an Execution in or of damages recovered in a Writ of Waste or in an action reall; for the damages are personall, and a man choose to have a *Fieri facias*, an *Elegit* or an action of debt; and if a man recovereth damages, and the Defendant fraudulently selleth and alieneth his goods, the Plaintife may take issue thereof; And if it be so found, the Plaintife may have Execution of the goods sold by fraud. 43. Ed. 3. fo. 2.

And if after judgement, a man will sell his goods to defraud me of my execution and nevertheless taketh the profits of them. 22. liber. Assise 72. 50. Ed. 3.

Action of debt was brought against Executors, who pleaded gift of the Testator of all his goods by Deed, without that they did Administer any other goods, the Plaintife averred that the gift was

was to avoid his debts. 13. H. 4. fo. 9. 16. E. 4. fo. 9.

But now by the Statute of 13. *Eliz. cap. 5.* All conveyances of Lands, Hereditaments, &c. Rents, &c. Goods, &c. Chattels, &c. of judgements or Executions suffered and done to defraud Creditors of their just Law for the same, &c. are void as to the Creditors, &c. although there is fained consideration expressed of use or any other matter, &c. 13. *Eliz. cap. 5. Statute 2. Rich. Statute 2. cap. 3.*

A. is bound in a 100.l. and condemned and in Execution, and in gard, and pleaded an acquittance after the last continuance, adjudged by the Court that he should have in the same terme a *Scire facias*, but in another terme he must have an *Andita querela*. Mich. 21. H. 7. fo. 29.

Acquittance
pleaded by one
in execution.

A Stranger which was not bound in a Statute, &c. shall have an *Audita querela* although he were not Tenant of the Land at the time of the Execution sued, if he have any matter in writing to discharge it. 11.E.3.lib. A^{ss}ise; and that the feoffee of the Conisor shall not have an *Audita querela* untill his Land be had in Execution.

*Audita que-
rela.*

In *Audita querela* and a Writ of Error, the plain-
tiffe shall have a *Superfedeas*, to avoid the paine of
the Execution, untill the Error be tryed, but after
the *Superfedeas*, if he be non-fuite, he may have a
new writ of Error, or *Audita querela*, but no more
a *Superfedeas*, for the mischief of delay. *Tr. 16. H. 7*
f. 11. Hil. 2. H. 1. f. 12. Pas. 5. H. 7. f. 22. And in *Au-*
ditia querela, a *Superfedeas* may be in it expressed,
and it is a *Superfedeas* of it self, and a Writ of Error
and

Audita querela
Supersedeas,
Error.

Feoffee of the
Conisor.

A man condemned by default in a *Scire facias* upon a Recognisance.

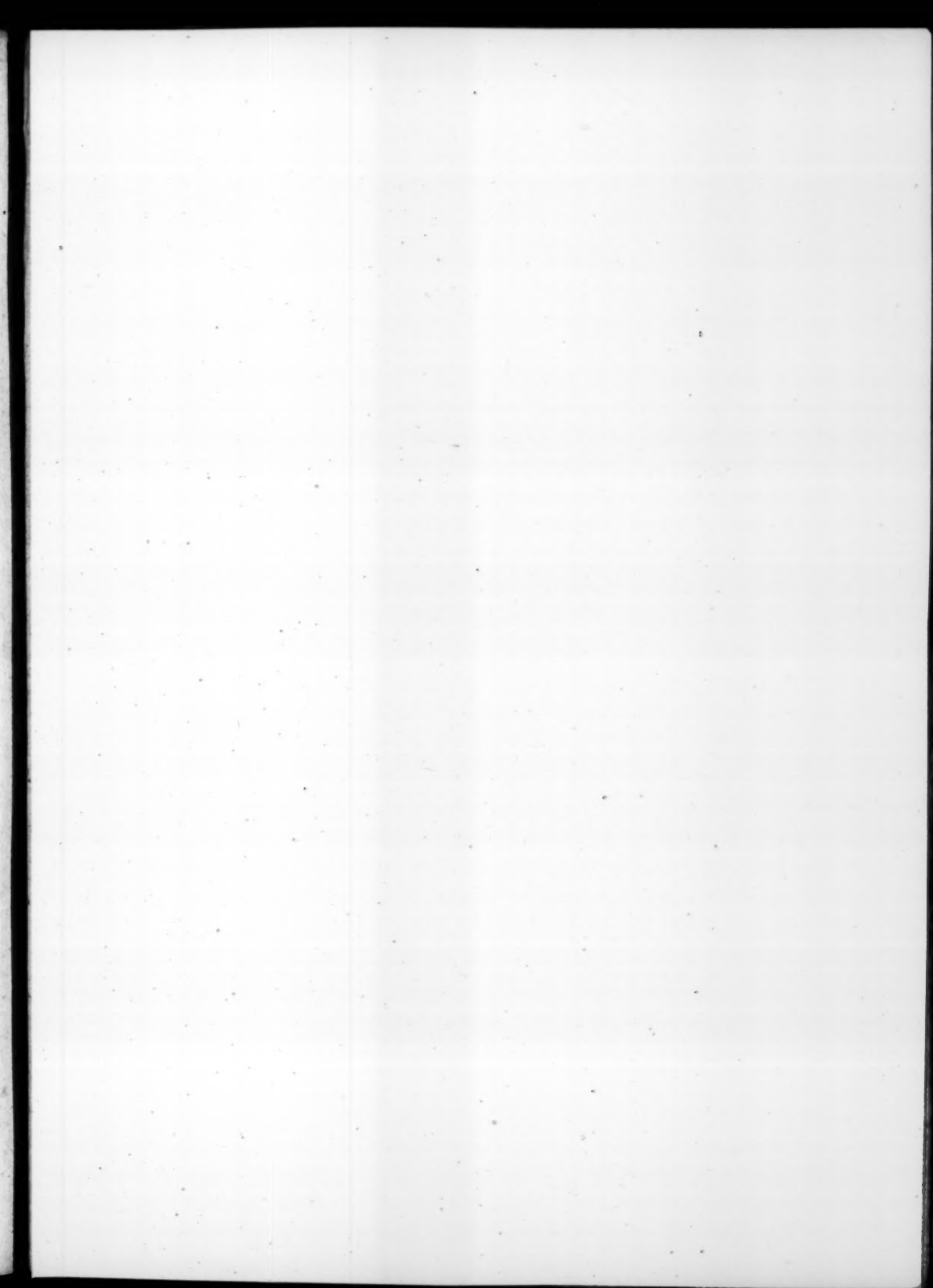
and *Certiorari*, *Hilar. 6. Hen. 7. fol. 16.*

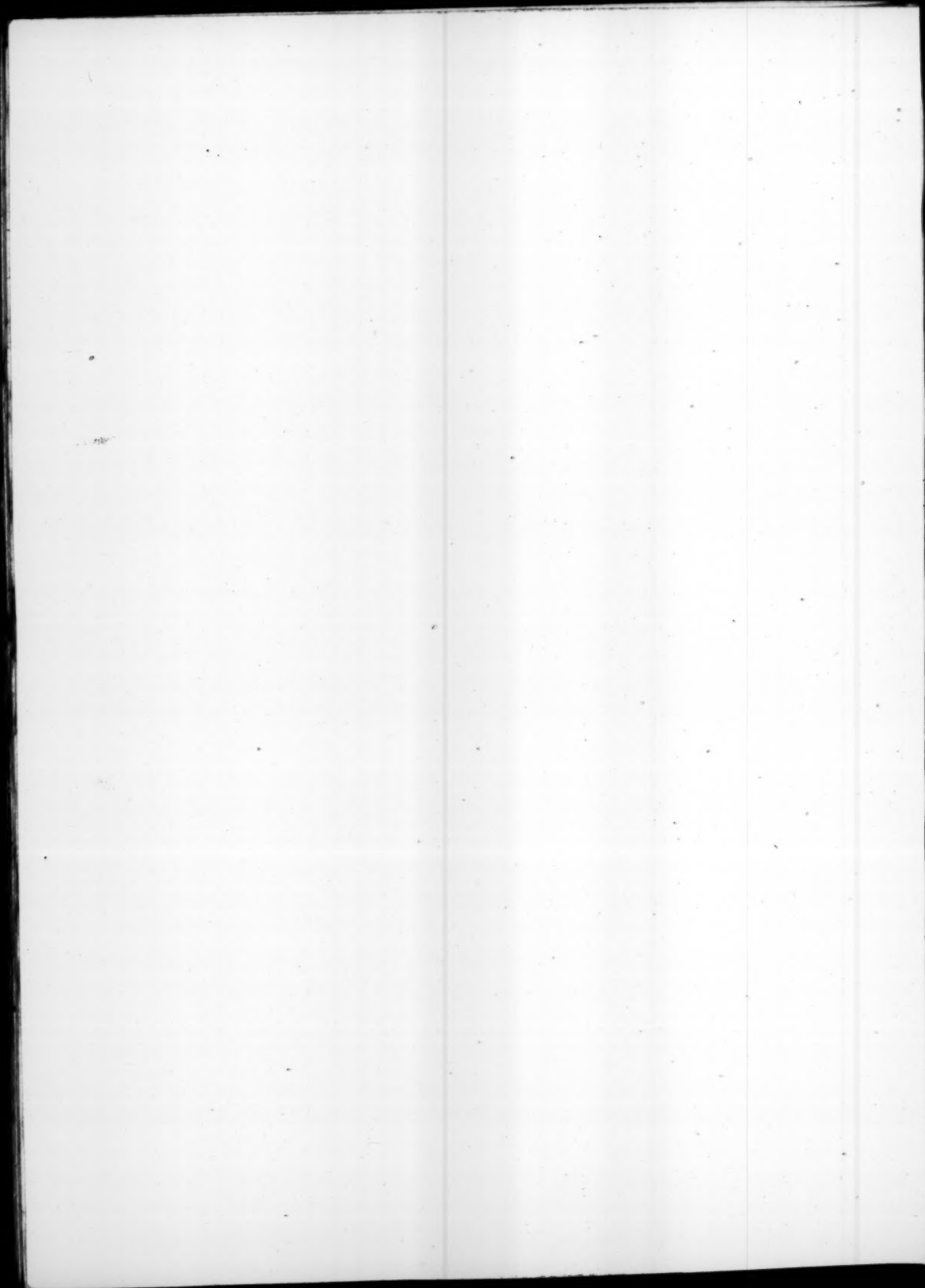
Puttenham condemned by default in a *Scire facias* in the Chancery, upon a Recognisance there and committed to the Fleet, and the Gardian of the Fleet was commanded by the Court, to detain him in prison, and in Execution for the condemnation, and other causes.

The Warden of the Fleete tooke a Recognisance of *Puttenham*, to save him harmelesse against all men, and suffered him to escape; The Conusee sueth the Warden of the Fleet for this escape, who imparleth, that is, desireth day to answer, and sueth *Puttenham* upon his Recognisance, and joyneth issue upon this point, that hee was not damnified; and the judgement of the Court was, that he was not damnified; for three causes.

The first is, because that a *Capias* is not for an Execution upon a Recognisance, because it is not in the Originall, but he must have a *Fieri facias*, or *Elegit*.

The second, because *Puttenham* commeth not into the Court by a *Habeas Corpus*, whereby not knowne to the Court, nor opposed whether he be the same person, or not which was awarded to Execution or not, where peradventure hee would choose another manner of Execution, but agreed by the Court, that if the Plaintife had brought his originall Action for his debt, that he after might have his Execution by a *Capias*, but he could not have an *Elegit* there, but of Lands which the Conusor had the day of the judgement, whereas





whereas in a *Scire facias*, hee shall have those which hee had the day of the Recognisance, &c. *Dyer* 306.

Lands holden of the King in *Capite* in chiefe are extended upon a Statute, the Tenant dieth, his heire within age, an Office finding the dying seised of his Father, & not the title of the Conusee, whether the Conusee shall answer the profits of the Lands to the King or no, or hold the same to himselfe by the Statute of 2. *Ed.* 6. it is a doubt and a *Quare*, *Mich.* 15. *Eli.* 7. *Dyer.* 319.

If an Infant doth bind himselfe in a Statute Merchant, or in a Statute Staple, he may avoid this Statute during his Nonage, by *Audita querela*, and also he may have his *Audita querela* after his full age to avoid this Statute by matter of fait. And the like Law if the Statute be acknowledged dures of imprisonment.

A man bound in Recognisance in the Kings Bench unto the King to keepe the peace, one commeth for the King, and saith the Recognisor hath broken the peace, and hereupon *Scire facias* did proceed against him; And the Jurors did appear, and holden by the Court that if the Recognisance be found for the King, yet it was determined and forfeited unto the King, otherwise it remained in Court a Recognisance still as before, *Mich.* 10. *H.* 7. fol. 11.

If a man be condemned in an action of debt, or any other action, and his body be in execution for the same debt, &c. and he breaketh the Prison and goeth at large, the party shall never have a

Extent of land
in *Capite*.

In fait bound
in a Statute
Merchant.
Audita querela.

Recognisance
for the peace in
the Kings
Bench.

A man in execution breaketh Prison.

N

new

new execution of his body or goods after; But he must recover the debt against the Jaylor; yet it shall be lawfull for the Jaylor to apprehend and take him again, although he be parted out of sight, *per Cur. Mich. 14. H. 7. fol. 1.* And thereupon the Jaylor shall be discharged, and the Prisoner which escaped being taken again, shall never have an action of false imprisonment, neither an *Audit & querela* for this second imprisonment, *Pascb. 21. 1 H. 7. fol. 23.*

Elegit Capias.

If a man recover debt or damage, the Plaintiff must choose to have his Process for his Execution, for if he prayeth an *Elegit*, if after the land be recovered against him by one that hath good title thereunto, he shall never after have a *Capias*, or a *Fieri facias*, if it be in the Original; But upon an Execution upon an extent if the land be devested from the possession of the Conusee, he may arrest the body by a *Capias*, *Mich. 15. H. 7. fol. 15.*

Fieri facias.

Execution upon an extent.

Arresting without warrant.

The Sheriffe by a *Capias* to him directed, may arrest a man without shewing him his writ, and so may a Bailiffe errant without shewing him his warrant, and if they will not obey, they may retourn a *Rescous*, but otherwise it is where the Sheriffe doth make his precept or warrant for his servant to arrest, who is not known there, the servant must shew his warrant, or else not to be obeyed, *per Mich. 14. H. 7. fol. 9.*

Action of account against the Sheriffe.

A Retourn,
*Quod non inveni
emptores, ven-
ditioni expensas.*

In a *Fieri facias*, if the Sheriffe doth levy the money, and keepeth the same in his hands, the party shall have an action of account against him;

But

But if he retourn *fieri feci sed non inveni emptores*, a Writ called *venditioni exponas*, shall be directed to him, commanding him to sell the goods, and bring the money to satisfy the party, and the party shall never have a new execution, and the Sheriffe must tender the money in the Court, *Mich. 13. H. 7. fol. 2.*

Leases, Reservations, Reentries.

IF a man demise Land by word, reserving Rent, and after maketh an Indenture of the same Land unto him, making no mention of any Rent, yet the reservation is good: And if a man demise Land for years by word, and reserveth no Rent, and after he maketh an Indenture of the same Land, and lease, and in the same reserveth a Rent, this reservation is good, *per Finum, Chiefe Justice. 21. H. 7. 37.*

A Lease by word reserving Rent.

Reservation good.

A man seised of an Advowson in fee, granteth the same to another man in fee, reserving the Advowson to him during his life, this reservation is void, for he had a fee simple therein before, and it is void, because the reservation is repugnant to the Graunt.

And if a man do grant the Advowson, and reserveth the presentation to himself during life, this reservation is void, for he had a fee simple therein before, and it is void because the reservation is repugnant to the Graunt.

And if a man doth let one acre of Land for life,

life, reserving the herbage of the same acre, this reservation is void, for it is parcell of the thing granted, and therefore repugnant and void, 38. H. 6. fol. 38.

Note that a reservation cannot be good to him which giveth nothing, nor to him which hath nothing in reversion; for if a man is seised of Land in fee, doth give the same in taile, reserving to him and his wife rents, &c. The wife by this reservation hath nothing, because she did give nothing, nor hath any thing thereof in the reversion: And the like Law is if the husband gives Land in fee, to hold to him and his wife, she hath no interest herein: But where two men are seised of Land, &c. they may give Land reserving rent to one of them, because both of them did give, which note to be cleare Law, per Car. 31. Assis. Pasch. 31. 49. Ed. 3. fol. 15.

Woods reserved in a lease.

Cutting and the carrying, the Reserver hath of common right.

A wood given, a wood excepted, difference.

If a Lease is made to me, and there is an exception made to the Lessor of all the woods and underwoods to himself, the fowles which breed in the trees are excepted; but I shall have the herbage and the profits of the soyle, and mire, and quarry: And if my Landlord doe except and reserve the woods, mines, or quarries, &c. It is implied in Law that he may enter, cut down, and digge, and carry the same away, or otherwise he could not have the thing excepted.

And note that by *Brudenell* Chiefe Justice, that by the gift of a wood, the soile and ground passeth, but a wood being excepted nothing is excepted but the trees onely.

But

But if a man doth give wood or trees, or by lease they are excepted ; Apple trees are not excepted nor given, but the Tenant for years shall have the Conies and Partridges, which do not come by reason of the trees.

Apple trees,
Conies, and
Partridges.

And by reservation of a pond or river, the Lessor, or Landlord shall have the fish or fowls in the pond, and river ; And the Law doth give the Lessor a way and mean to the things excepted, to take them ; As if the Lessor or Landlord doth except a Stable, or a Chamber, or, &c. he shall have free egress and regress into the same of common right to take them, 14. H. 8.

Reserving a
pond or river
free egress
and regress of
right ever to
the Reserver.

I am seised of Mannor, unto which a Piscary, or fishing river is appendant, and I do let the Mannor, by these words, I do let all the part of my fishing unto A. from such a place unto such a place of the same, *Salvo mihi & heredibus meis stagno molendini mei*, from such a place, &c. By this *salvo*, &c. that is, Saving to me and my heirs the Mill pond, Nothing is reserved but the soile and ground of the pond, and the freehold of the same, and the water of the Mill, & the same to grind corn & to carry and recarry to and fro the Mill : But in this saving, and exception, the fishing hereof is not excepted nor reserved for A. unto whom I did let the fishing in the Mill pond, although that I have the soyle and the water, and this is not like the case of exception of trees, whereupon Heronshews did breed, as in Mich. 4. H. 8. before.

Fishing reserved.

If a man doth make a feoffment in fee, reserving rent without Deed, this reservation is void,

Rent reserved
without Deed.

Rent assigned
for Dower
without Deed.

but otherwise it is if it be by Deed indented ; But if rent is granted without Deed by equality of partition, or if Rent is assigned to a woman in the name of her Dower, it is good without writing.
12.H.4.17.

Hold of the
Lord Para-
mount.

But if a man do make a feoffement in fee of Lands, &c. or in tail, the remainder in fee without Deed, reserving rent, this reservation is void, because no reversion remaineth in the Dower, or feoffor, and he must hold immediately of the Lord of whom the donor or feoffor did hold by the Statute of *Westminster* the third, *Quia emptores terrarum*, by which Statute the feoffee, or donee, should hold of the feoffor or donor immediately, and not of the Lord Paramount, which now they must do.

Reserving rent
having no re-
version, Rent
Seck.

But if such a feoffement is made by Deed indented of Land, &c. reserving rent and hath no reversion in the same Land ; This is a Rent seck, which is called a dry Rent, which cannot be recovered by Distresse, nor by any other way but by an assise, if there were any possession thereof had or seisin, otherwise this reserved is nothing worth, and the party hath no remedy to recover the same.

Rent Charge.

But if such Rent is reserved by Deed indented with a clause of Distresse, the Rent is called a Rent-charge, and the Land shall be charged therewith, in whose hands they are, only by force of a clause of Distresse in the writing, and not of common right.

A man selleth me all his woods in *Dunmow*, except

cept forty of his best Oakes to be felled down within two years, and an action of trespassse, *Quare vi & armis* is brought against me, I plead that I did come to fell them, and did give warning to him to fell his forty Oaks, or to choose them, because I could not tarry any longer time to fell the wood, but he refused, and after I did fell the wood except forty Oaks, and my justification was adjudged good, *per Cur. 3. Ed. 3.*

A sale of wood certain Oaks excepted.

But where a reversion is in a man of lands, which he maketh a feoffment of, with a reservation of Rent, that reservation is good, and he may distrain for the same of common right: As if lands are given in tail, or for terme of life, or for years, reserving Rent, a Distresse is liable for the same of common right; *Look in Rents.*

Distresse incident for a rent, reserved where a reversion is.

If my Father letteth land rendring Rent, and died, I shall have this Rent, for Rent and Reversion is all one, and is parcell of the Reversion, and by graunt of Reversion, Rent passeth, *per Cur.* Yet it appeareth not here that the Lessor doth reserve to him and his heires.

But if a man letteth land, reserving Rent to a stranger, this reservation is voyd, because there is no privity between them. *14. H. 6. fol. 26.*

Rent reserved to a stranger voyd for no privity.

Rent may be reserved upon a fine executory, but not of fine executed. *50. E. 3. fo. 9.*

Reservation of rent upon a fine.

A fine levied to render twenty quarters of wheat yearly, with a clause of Distresse, is a good Rent and a good reservation. *34. E. 3. fol. 36.*

Reservation of 20 quarters of wheat by fine with a clause of Distresse.

Leases for yeares.

IF a lease is made of a meer incertainty, and the Tenant for years dieth before the lease is reduced to some certainty, it can take no effect, nor ever be vested in the Executors or Administrators of the Tenant for years, *per Curiam*.

As where a man is possessed of a lease for forty years, and granteth to me so many years of the same, as shall be behinde at the time of his death, this is voyd because of the incertainty thereof, *per Cur. 7 E. 6.*

And if a lease is made to me of so many years as the Executors of the lessor shall name, this lease is voyd for the incertainty, but otherwise it is by will, *Plowden Com. 273.*

A lease is made to me of land by Deed indented during my life, *Proviso*, that if I died within sixty years, that then my Executors should have so many of the sixty years which should be behinde at the time of death; This is no Lease but a Covenant because of the incertainty, 3. & 4. *Phil. & Mary, Dyer 150. Cranmers Case.*

Land is demise to me for 40. years after the death of *I. G.* If that *I. G.* dieth within ten years next ensuing, if *I. G.* do survive the ten years, the lease for 40. years can never take effect, *per Popham Chief Justice.*

But if I am possessed of a lease for 80. years, if I in consideration of a marriage to be had between my son and the daughter of *I. G.* demise my land
which

which I hold by lease unto my son for 70. years, *habendum*, after my death, the lease adjudged to be good.

And the differences between this Case and the Cases before, is because I demised the land with these words, To have and to hold, &c. after my death for seventy years, wherein was apparent certainty, and no apparent incertainty in the Demisee, *Mich. 34. & 35. Eliz. per Curiam. Lostecrofts Case.*

A lease is made of land to *Eliz. I. Habend.* from the twelfth day of *March*, &c. unto the end and term of 80. years then next following, if the said *Eliz.* liveth so long: And if she died within the aforesaid term of 80. years, or did alien the premisses, then her estate should cease: And by the same Indenture the lessor did give and grant, and demise the premisses for so many years as was then to come, and unexpired and remaining after the death of *Elizabeth*, or after her alienation unto *J. Atkinson*, for and during the residue of the 80. yeares, if he lived so long without alienation of the aforesaid term; Or if he died or did alien the premisses within the term aforesaid, that then his estate should cease. And it was adjudged *per Cur.* that the term was expressly determined and voyd by the death of *Elizabeth*, for the limitation, that is, if the aforesaid *Elizabeth* lived so long, *Mich. 32. & 33. Eliz. Rot. 1832.*

Tenant for yeares, or for life, or lives, their Executors or Administrators, &c. shall have the like action, advantage, and remedy against the man, his

his Executors, heirs, unto assignes, and whom the Lessor or Landlord hath granted the reversion of such Lands demised, as they might have had against the Lessors and Grauntors themselves, *Stat. 32. H. 8. cap. 34.*

Joynt-tenants and Tenants in common, which hold lands for term of life, or for years, shall be compelled by a Writ of partition to be sued out of the *Chancery*, to make partition of the lands which they so hold joyntly, or in common; and so may joynt-tenants, and Tenants in common do upon estates of inheritance, *per Stat. 31. H. 8. c. 1. & 32. H. 8. 32.*

Dean and Chapter of *W.* made a lease, &c. for 30. years, and after made another lease to another man for 50. years, to begin after the extirpation of the 30. years, and that before the entry or claim; It was a doubt in Law if the lease of the 50. years be void or not, because they could not re-enter during the first lease; And another doubt whether they may enter without Attourney warranted by their common seale. *Pasch. 1. Mar.*

Note that the Tenant for years shall have all the trees blown down with the winde. *Mich. 10. H. 7. fo. 2.*

Lessor nothing
in the Land.

Lessor shall be stopped to say, that at the time of the making of the lease he had nothing in the land, if the lease be made in writing.

A recovery falsified.

Tenant for years may falsifie a Recovery against his Landlord, which is suffered by his Landlord by collusion to avoid his lease, *per Cur. Hil. 1. H. 7.* IF

If the lessor do grant his reversion, and the Tenant for yeares do attourn, there is privity between them, and if the Tenant commit Waste, he in the reversion shall punish him.

Lessor nothing in the Land.

If the lessor hath nothing to do in the land at the time of the lease made, nor hath any interest in the same, nothing passeth by the same lease: yet the lessor may distrain for the same rent and advow for the same rent behinde unpaid, for the lessee is stopped to say the contrary, *Trin. 27. H. 8. fol. 13.*

Lessor nothing in the Land.

A lease made for yeares without any rent reserved is good, if there be a consideration in the same; As in consideration of twenty pounds paid to the Lessor, or in consideration of his good service, &c. *Mich. 12. H. 7. fol. 13.*

No rent reserved.

Lease of land at will, if the lessor or lessee dieth the lease at will is determined: And if the Tenant do occupy still the land, yet he is but the Tenant by sufferance, *Mich. 21. H. 7. fol. 38.*

Lease at will.

Note that a *Proviso* in a lease, or, &c. hath his operation as the words following the *Proviso* do declare; for sometimes it is a Condition, sometimes a Limitation, and sometimes a fore-prize or exception, and sometimes a condition or limitation of an estate, *Trin. 27. H. 8. fol. 8.*

Proviso in a Lease.

And a *Proviso* hath another manner of operation and nature then these words, *Si contingat*, and these words, *Et quod bene licebit*, or *Et quod tunc*, for a *Proviso* being broken, maketh a lease voyd in Law, without expressing any words of Re-entry; And therefore after the condition broken, he hath title

Proviso is better in a Lease, then *Si contingat*.

title to enter, although this word of re-entry is not expressed. *Trin. 27. H. 8. fol. 9. Fitzherb. Iustice.*

Proviso in a
Lease.

A lease of lands for twenty years, Provided that the Tenant shall not occupy the Land but for ten years, this Proviso is a limitation for an estate, and abridgeth the first words of the lease. *Trin. 27. H. 8.*

A re-entry and
the lease voyd
by a Proviso.

A lease of lands for years, Provided that the Tenant shall not let over his estate, or commit any waste, his state is determined, and the lessor may have a Writ of Waste, supposing *quod tennit*, without any re-entry made; and if the Tenant continueth his possession still, the Lessor may have an Affise against him. *Trin. 27. H. 8.*

Proviso in a
Lease.

Lease for 20. years pleaded, &c. That if *I. B.* doe die, that then the Tenant shall occupy the same no more, or that hee shall remove, or that his tenants terme shall then cease, This Proviso maketh a Condition and a Limitation how long the Lease shall endure. *Trin. 27. H. 8.*

Re-entry.

A Lease is for years, and after by another Deed the tenant for yeares granteth to his Land-lord, that if the Rent is behinde and unpaid that the Land-lord may re-enter, yet if the rent is behinde and unpaid, he cannot re-enter, but he must bring his action against the tenant. *H. 8. 19.*

A Lease is made by a Land-lord of a Manour of his Seigniory for yeares, and after, the Quit-rent is behinde unpaid, The tenant for years may distrain, & have all the profits which shall chance to be or fall by reason of his Seigniory, yet the
Lease

Lease is but a chattell, neverthelesse that which the tenant hath by lease is an inheritance. *Per Cur.*

Hil. 9. H. 7.

But if this Quit-rent is not paid, the Tenant for yeares cannot have an action for it, because the Seigniori continueth in him during his terme; for a Lord of a Manour cannot have an action of debt against his tenant for his Quit-rents, but if the Quit-rents be behinde and unpaid after the terme of yeares ended, the tenant for yeares of the Seigniori may have his action of debt for the arrerages of the same, because at the first it was a chattell, and for that he hath no other remedie; for he cannot distraine for rent after the terme ended.

Per Cur. Hil. 9. H. 7.

A Lease of a Rectory of a Parsonage is good without writing or deed, and the tithes shall passe by the same, for the Church and the Churchyard make a Rectory, & all passe by Lease by the name of Rectory: And the Parson shall have an action of Trespasse for the trees cut down in the Churchyard, and for carrying them away, and for entring and breaking into the Church; But the Parson cannot demise or let the tithes themselves without writing, *per Justiciar. Pas. 21. H. 7. Trin. 19. H. 8. fol. 12. per C.*

A lease for years of tithes rendring rent; Two exceptions weretaken against the Declaration of the Plaintife; The first was because the Plaintife did not shew an Indenture or Deed of lease; The second because he did not convey to himself interest in the tithes, for he is not Parson, nor hath shewn

A Lordship or Mannor demised.

The Lessee granteth Copies

Quit-rents.

No distresse for rent, the terme ended.

Parsonage letten by parcell.

Tithes letten.

Church-yard.

Tithes.

shewn that the Parson hath demised tithes unto him, which exceptions were adjudged good, *per Cur.* and the Court upon favour permitted the mending of the Declaration, for at the next term it could not be amended, *Pasc. 10. H. 7.*

Lease for years reserving rent upon condition, that if the Rent be not paid at the feast of *S. Michael, &c.* or within one month after that he may re-enter; The Tenant is not bound to pay the rent, or tender the same before the last instant of the last day: And if the Lessor be not there then to receive the rent, he cannot re-enter although he demanded the rent before; And if the Lessor do re-enter for default of payment, he shall have the land and the rent due, *per Cur.* and the like Law is upon an Obligation, *Pasc. 6. H. 7. fo. 3. Pasf. 20. H. 6. fo. 13.*

Parcell of
Rent received.

Part of debt
received.

Tenant for
years can doe
nothing before
his entry.

A lease of land is, &c. with a clause of re-entry, for not payment of rent, if the Lessor receive parcel of the rent, yet he may re-enter for the remnant of the rent unpaid; And so it is for the payment of an hundred pound, for if all the summe be paid but one penny, the Obligation is forfeited, *per Keble, Pasc. 10. H. 7. fo. 24.*

Note, that Tenant for years, shall not have his ejection firm, nor action of trespass before he hath entred, and a surrender of his term before his entry unto his Landlord, is voyd.

And a Release made unto him by his Landlord is voyd before he hath entred and hath possession.

And if Tenant for years out-lawed, and after doth

doth purchase his Charter of pardon before the Term beginneth, he shall not lose his Term, *Trin. 4. H. 7. fol. 17.* Yet a grant or seal of such a lease before the Tenant doth enter, is good.

Tenant for years may plead a payment of rent in a forrain Shire which is good; But in the same Shire or County the Tenant must conclude payment, & *il s'ent rien lui doit*, that is, he oweth him nothing.

Payment of rent pleaded in a forrain Shire.

But a Lease by Indenture for years, the Tenant may plead payment, or levied by Distresse, and so conclude, *rien lui doit*, without shewing any Writ, *Pasch. 1. H. 7. fol. 16. Mich. 11. H. 7. fol. 4.*

But if an action is meerly brought upon a writing, as upon an Obligation, or, &c. there he shall not answer unto the debt, but unto the writing, *Mich. 11. H. 7. fol. 4.*

A lease for years without impeachment of waste, is nothing worth except it be granted by Deed, for during the term, the Tenant for years hath no interest in the trees, but for the lops and shadowing of his Cattell, *per Finex* Justice: And if Tenant for years do sell one Oak, and after selleth his lease to me, and after the buyer of the Oak selleth it down, I which did buy the lease shall be charged for the same in an action of Waste, yet the beginning of this wrong was by the first sale.

A lease without impeachment of Waste.

The Tenant selleth timber.

But because it was not executed in his time, he shall not be charged, but the second lessee, *per Keble. Mich. 16. H. 7.*

This

This Covenant in a lease, (And that it shall not be lawfull unto the lessee for years, to alien, or set over his lease without license of his Landlord, without pain of forfeiting the same) Adjudged, *per Cur.*

Executors and
Assignes not
expressed.

That this was a Conditionall lease, but this Conditionall restraint continued but during the life of the Landlord and Tenant; The reason seemed to be because there wanted in the Covenant and Conditionall clause these words, Executors, and Assignes, *Mich. 3. E. 6.*

And the lessee shall continually dwell upon the premisses upon pain of forfeiting the same; This clause in the lease is Conditionall, *per Cur.* for the clause is the words of the Lessor, and of the Lessee.

A Conditionall
Lease.

And likewise that these words, That it shall not be lawfull for the lessee to alien, &c. upon pain of forfeiting the same; This is a Conditionall Lease; and a Covenant and a Proviso may concur and incur in a Lease. *Hilar. 7. Ed. 6.*

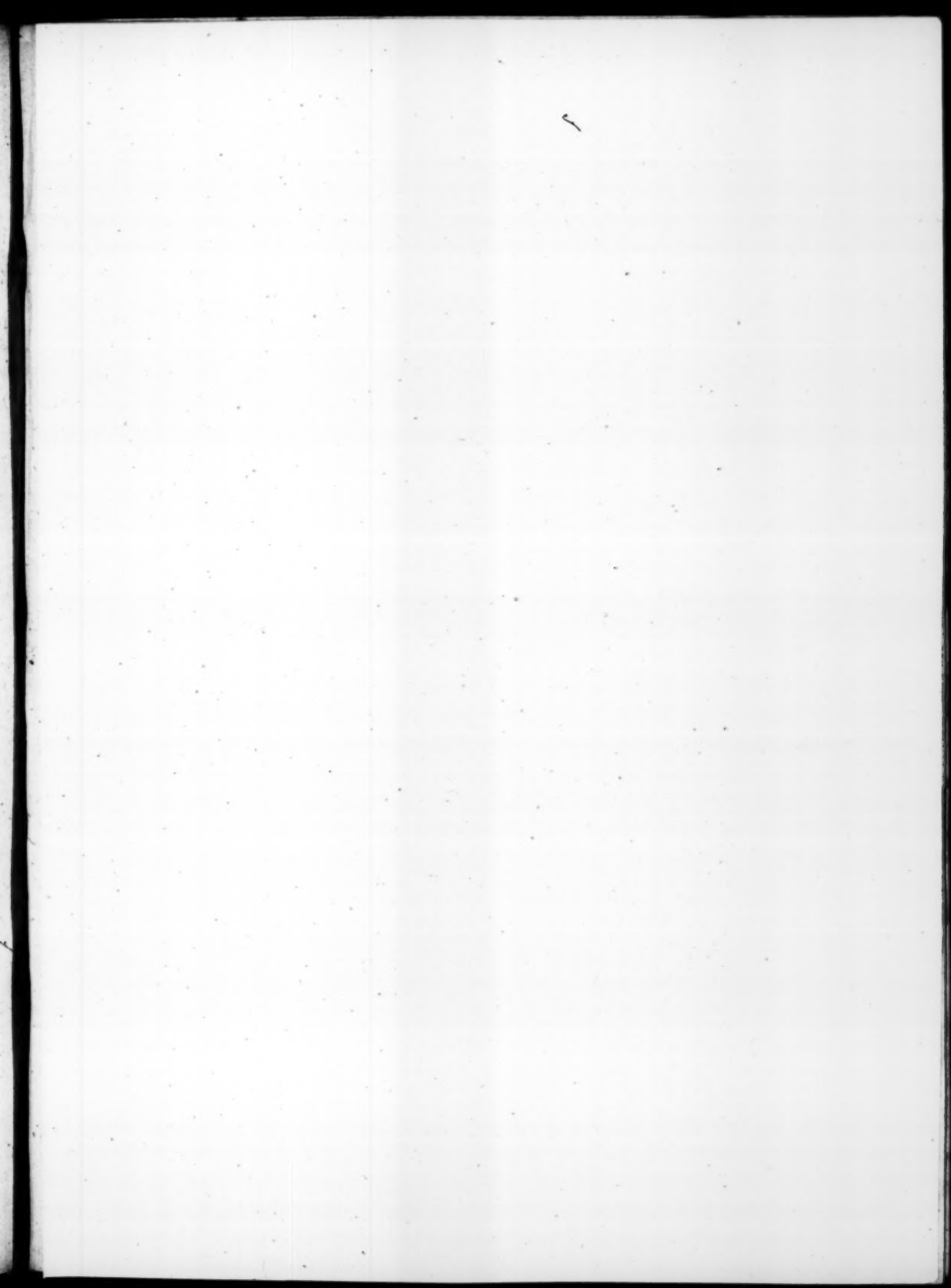
Lease with a
Proviso.

Lease for years by Indenture, Provided that if the lessee dieth within 60. years, that his Executors should have the said lease in his own right, untill the end of the said 60. years, Adjudged *per Cur.* to be a Covenant and not a lease, *Trin. 4. Mar. Gravens Case.*

A Lease with a
Proviso and
Covenant.

Lease made for years, Provided alwayes, and it is covenanted and agreed between, &c. And the Lessee doth covenant, That neither he, Executors, nor Assigns, shall alien or grant this term

to





to any without the assent of the Leasour, except it be to his wife or one of his children. Not to alien the Lease.

The Tenant for yeares dyeth and his Executors grant the Lease unto one of the sons of the Lessee, the opinion of three Justices was that the son could not grant over his Lease unto a stranger without licence, but three other Justices were of contrary opinion, and said that the restraint was determined by the grant unto the son, the other Justices doubted hereof, and also doubted whether it were a Condition or a Covenant; *Mich. 3. Marie.* A Condition or Covenant.

Lease for yeares granted unto two men, provided that if they dyed within the terme, that the terme of yeares should cease and bee void; the Farmers make partition of the land, and after one of them dyeth, the opinion of the Justices was that the Executors of the Tenant which had the moiety should have the same, and that the terme should not cease and determine during the life of his Companion. Lease unto two, a Proviso.
Executors.

But if the Lease had been made for lives it had beene determined by the death of one of them, *Mich. 3. E. 6. Farringtons Case.* Lease for two lives.

Hynde the Land-lord doth Covenant with his Tenant without naming his Executors or heires in the Lease, to pay and discharge quit-rents, and dyeth, the opinion of some Justices was that the heires and Executors of *Hynde* should not pay the quit-rent, for the Covenant bindeth onely the person of the Leasour, and the Covenant dyeth with him, *Pas. 3. Mar.* A Covenant to pay Quit-rents.

A Lease by
Tenant in
Dower.

Tenant for yeares, tenant in Dower demiseth land for yeares rendring Rent, and dyeth, the heire cannot bring an action of Debt for his Rent, *per Fitzh. Fitz James & Inglesfeild* Justices 24. H.8.

By tenant for
life void.

And if Tenant for life letteth lands for yeares rendring rent and dieth, the Lease is good.

By a Parson of
a Church.

The like is of a Parson of a Church, but otherwise the Law is, if a Parson doe make a Lease reserving rent, and his successor doth receive the rent, this affirmeth the Lease for life, but otherwise it is upon a Lease for yeares, for when it is void by death the Lessor cannot make it perfect by any acceptance of Rent, *4. H. 6. fo. 26.*

Acceptance of
Rent.

A Lease for
life and three
yeares after.

A Lease made to I. H. for life and for 3. yeares after, it is good as well for the one as the other, and after his death his Executors shall have his terme of three yeares, *per Cur. 50. Assise.*

Tenant for
yeares Gardian.

A Gardian of an heire in Knights service shall not put out the Tenant for yeares of the Ancestor of the heire, *per Cur.*

And the like Law is of a Lord that hath land by Escheate 36. H.8. yet holden contrary in the new *Natura brevium, Fitzherbert.*

Lease by the
Lessor and
Lessee.

Land is demised for foure yeares and after the Lessor and Lessee demiseth the land unto another man for 60. yeares, this a good Lease after the foure yeares are ended, *per Cur.*

A second Lease
when it begin-
neth.

And note that if I make a Lease for 20. yeares, and after I let the same land to another for 60. yeares, the second Lease shall take effect for 60. after the lease of twenty yeares is expired *per Cur.*

Bromely

Bromely & per Cur. Temp. H. 8. & 2. E. 4. fo. 11.

And if a Lease is made of woods by yeares the Leassee shall have the Hawkes and other Fowles breeding in the same, but otherwise it is if the Leassor reserveth the trees and woods, 16. E. 4. 2. 14. H. 8. fo. 1.

Issue is joyned *Si dimisit modo & forma*, and the Jury did finde the speciall matter adjudged *per Cur.* that *modo & forma* was not materiall; but the chiefe matter was *Si dimisit*. Issue joyned, *Si dimisit modo & forma.*

Issue was joyned *absque hoc*, that the Leassor did demise, and adjudged to bee a good Evidence that the Leassor had nothing in the land of the Lease made, but in a *Formedon* it is a good Traverse to say that the Donor had nothing in the land at the time of the gift, but he must say, *non debet*, Pasch. 3. *Maria.* Leassour hath nothing in the Land at the time of the Lease made.

If a Parson demiseth his Rectory or Parsonage for terme of yeares by word the Lease is good, for the Tenant must have the Tithes and Offerings which are incident to the Parsonage, and the Lease is good although there is no house thereon but onely the Church and the Church-yard, and the Tenant may bring his Writ of *Ejectione firme* if he is put out. A Parsonage demised by parcell is good.

But the Tithes and Offerings cannot be demised without Deed no more then rent can be granted without Deed, *per Cur.* 19. H. 8. fo. 12.

A Lease is made to me of lands for one yeare, and so from yeare to yeare at the will of the parties, if one yeare is passed and another yeare is begun, my Land-lord cannot put me out till my A Lease from yeare to yeare.

second yeare be ended, and he must give warning halfe a yeare before the yeare is ended.

Warning.

And the like warning must be given to a Tenant at will, but otherwise it is of a Lease for yeares or for during the life of another man, for in these Cases warning is not to bee given nor required, 14.H.8.*fo.*16.

A Lease for yeares, not expressing how many yeares.

A Lease is made of land for terme of yeares, the Tenant shall have the land for two yeares and no more, for every Lease must expresse the terme certaine when to begin and when it endeth, and the yeares being not expresseed certaine, the tenant cannot have it but for two yeares, and for no lesse then two yeares, *per Fitzherbert Justice.*

A Lease for 10. yeares at the will of the Leasour.

A Lease of land for ten yeares at the will of the Leasor, these words (at the will of the Leasor) are void, because they are repugnant *per Croke Justice*, but other Justices contrary, and that it was but a Lease at will for the incertainty, 14.H.8.10.

Lease *per* Tenant in Chiefe before livery sued.

Tenant of the King holding lands in chiefe dieth, if his heires before livery sued and maketh a Lease for yeares, the Lease is good, except there is an intrusion found by Office, and an Office found after the finding the dying seised of the Father and no intrusion hath no relation unto the death of the Ancestor, but for the profits and not to defeate the Lease, for the freehold and inheritance remaineth in the heire.

Lease void by Intrusion.

But if an Intrusion is found by Office against the heire, then a Lease made by the heire is void and the wife shall lose her dower, *Quia nullum accrescit*

crefcit illi liberum tenementum priusquam Domino Regi fecit fidelitatem, 1.H.7 fo.17. & 4.H.7.

If an Infant maketh a Lease it is not void but voidable, and if at his full age hee receiveth the rent, he affirmeth the Lease and maketh it good, 14.H.8.fo.29.

A Lease by an Infant.

But if an Infant or a man by duress of imprisonment doth make a Lease for yeares, and the Tenant entreteth, these may bring their Assise against the Tenant, *per Brian Fincux & Frowick Justices.*

And by a man in prison.

But if an Infant or a man by duress of imprisonment doe make an estate of freehold and they themselves doe make livery and seisin, the Law is otherwise, for they in this Case cannot enter nor bring their Assise, nor plead *non est factum*, although it is in writing, but in an action brought for the recovery of land, they must give this matter in evidence, but if they doe give livery and seisin by a Letter of Attourney and not by themselves, the Law is otherwise, for then they may recover the land againe by Assise or by entry, but if a feme Covert doe make such an estate by writing it is void. 14.H.8.fo.19.

If I doe give licence to a man to enter and occupie my land for a month or for a yeare, if I doe bring an action of Trespasse against my Tenant, he must plead that hee doth occupie my land by Lease and by licence, *per Cur. 5.H.7.*

Licence to enter and to occupy land.

A Lease for ten yeares is made of land, &c. and after the Leassor demiseth the same unto another man for twenty yeares, the second Lease is good for the last ten yeares of the second Lease

A Lease for 10 yeares, and after the Lease for letteth the same for 20 yeares.

after the expiration of the first lease of ten yeares,
: *Mich. 26. H. 8.*

But if I make a Lease to *John German* for life, and after I let the same land to you for 20. yeares, this second lease is void except it passeth by a Graunt in a Reversion with attournment, for a Freehold is more perdurable and more worthy in Law then a lease for yeares is, 37. H. 8. & 1. E. 6. yet if Tenant for life dyeth within the time, and before the expiration of the lease of 20. yeares, the rest of the yeares to come are good, 37. H. 8. & 26. H. 8.

A Parsonage or Rectory letten by word is good, but tithes without writing is not good.

A Parson demiseth his Rectory or Parsonage for terme of yeares by word, this is a good lease and the tenant shall have the tithes and offerings, for they are incident to the Parsonage, and the lease is good although there is no house on the same, but onely the Church and the Churchyard, and if the Tenant is put out he may have his *Ejectione firme*, but the tithes of a Parsonage demised and letten without Deed and by word is void, and so is any Reversion granted without Deed, but a lease of a Parsonage with the tithes to the same belonging is good by parcell and not without Deed, *per Cur. Trin. 6. H. 8. 5. H. 7. fo. 8. 19. H. 8. fo. 10.*

Executors purchase the Reversion, the lease is extinct, but if a meane lease be in Reversion then it must remaine Assets.

Two men having a lease for yeares as Executors to *I. G.* and after they purchase the Reversion of the same in fee, the lease is extinct, but the Executors shall bee charged with the lease as Assets, but if they have the lease as Executors, and there is meane lease in Reversion for yeares, and
after

after they purchase the Reversion of the same land in fee, the first lease must remaine by reason of the first Remainder, 4. E. 6.

I am possessed of a lease for yeares, and I grant to I. B. so many yeares of the same as shall bee behind to come at the time of my decease for this is certaine, but in the first place I being the Grantor may live all the threescore yeares, and then at the time of my decease no yeares will remaine, 7. E. 6.

Lease void for the incertainty.

I make a lease of my cattell, as of Oxen or Sheepe rendring rent to me, or for every Sheepe 4 pence, and for every Sheepe lost 16 pence, this is a good lease, 3. H. 7.

A Lease of Oxen and other Cattell.

If land is demised for yeares paying rent, if the rent is unpaid the Leassour may have an action of Debt, or an action of Covenant at his choise, for a lease by Deed is a Covenant, but if I covenant by Deed that I. G. shall have my land for 20 y. this is no lease, per Fines & Justice, 21. H. 7. fo. 36.

The Landlord may have an action of debt or Covenant for his rent.

And note that tenant for life or for yeares must pay their rent although the leassour will give them no acquittance, for if an action of Debt is brought for rent reserved on a lease upon an Obligation with condition for the rent levied by distress or payment pleaded is good without acquittance, but an Obligation single cannot bee avoyded without acquittance, for a Specialty cannot be avoyded without specialty, 8. lib. Assis. Pas. 37. Look in Obligations.

Acquittance for rent or debt.

Termor for yeares by Indenture doth covenant and grant, that if hee, his Executors or as-

Lease upon Condition.

signes alien, that then it shall be lawfull for the leassour to reenter, after the Tenant for yeares maketh his wife Executrix and dyeth, the wife taketh another husband which alieneth, some Justices were of opinion, that alienation was no breach of the Condition, because the second husband was possessed by the lease by law and not as Assignee, B.as they by the Curtesie of England, and the Lord of a Villein are, but *Browne* and *Shelley* Justices opinion was, that the Condition was broken, and the husband was assignee in the law, and the land subject unto the Condition in whose hands soever; but after this Condition broken, if the leassour maketh a new lease before he hath made entry, the lease is void, *per Cur. P. 2.*

28.H.8. *Leassour covenanteth that his Tenant for yeares shall have sufficient hedgebonds by assignment delivered, and fewell, Shelley Justice opinion, that the tenant for yeares cannot take any without assignment, Quia modus et convenientia vincunt legem, and the Copulative (and fewell) maketh that he cannot have likewise fewell without assignment, but Baldin Justice.*

A Lease from
3. yeares to
three yeares.

Lease is made for three yeares and those ended for other three yeares during the life of the Leassee, *per Cur.* this but a lease for 9. yeares, but if the lease had beene, and so from 3. yeares to 3. yeares during the life of the leassee with livery and seisin, then it had been a good lease.

Timber demised
except, &c.

Johnson demiseth divers Closes by these words, demiseth, granteth and to farne letteth these Closes,

Closes, &c. together with all manner of timber, wood, under-woods, and hedgrows, (except the great Oak in such a place,) The tenant for years cutteth down timber in a place where no exception is, adjudged Waste, *per Cur.* for the tenant for years with the timber demised unto him cannot cut down the timber, and this word Grant in the Lease but a word of demise.

Lease is made for ten years, after the Lessor by Indenture demiseth the same land unto *Johnson* for other ten years, to begin at *Michaelmas*; The first Tenant for years doth purchase the Reversion of his Landlord; *Johnson*, the second tenant for years may enter at *Michaelmas*; Adjudged, *per Cur. Trin. Hil. An. 2. Mary.*

Tenant for years rendering rent granteth his term of parcell of the land to him before demised; he unto whom this grant was made maketh a feoffment of the same parcell: The Landlord cannot have his Action of Debt for his Rent untill his reversion be recovered.

Quia accessorium sequitur; As if a man be disseised of his Mannor unto which an Advowson is appendant; If descent be once cast in the heire of the Disseisor, he cannot present before he hath recovered the Mannor, but otherwise it is before a descent is in the heire of the Disseisor; for nevertheless the disseisin he may present because his entry was congeable: Likewise the Landlord upon recovery of the land may arrest the first tenant for his whole rent, for the privity which is between him and the first tenant, because but parcell.

Reversions purchased.

Disseisin per Tenant.

Rent lost before the reversion, recovered.

Privity.

parcell of the land is demised. And so it is when but parcell of the terme of yeares is graunted.

Apportioning
of rent.

And the Rent cannot be apportioned, for before the state of *Quia emptores terrar.* no apportionment was of rent by the act of the party, but by the act of the Law; And particular estates doe still remaine of the Common Law, *Trin.*

Privy.

24. H. 8. Termor for years rendring rent, granteth parcell of his term of years unto *Harrison*, the Rent not paid, the Lessor cannot have action of Debt, nor action of Waste against *Harrison*. The second Lessee, because there is no privy between him and the Landlord; But if the Tenant for years granteth all his term of years unto *Harrison*, the action of debt or waste is liable against *Harrison*, for there is privy between the Lessor and the second Lessee. *Pasc. 5. H. 7. fo. 19. Hil. 1. H. 7. fo. 9.*

Executors and
Assigns not
expressed.

Tenant for years covenanteth in his lease to edifie without these words, Executors; The tenant dieth, the Executors shall be charged with this Covenant, Although they be not named nor expressed, but the heir shall not be charged in this, nor in an Obligation except heir be expressed and named, *per Fitzh. & Shelley Justices; Baldwins* opinion, that Executors shall be charged, although not expressed in an Obligation, but this action did found but unto damages and roete which is but action personall, *Qua moritur cum persona, Trin.*

28. H. 8.

A Prior maketh a lease of the demesnes of

a Mannor for life rendring rent, the King after the dissolution of the said Priory, maketh a lease of the Mannor, the Rent and Reversion of the demesnes of the Mannor doth passe.

A Lease of the demesnes of a Mannor.

A lease is made of a Colledge for years, nothing is demised but the Scite of the Colledge, which is the circuit or compasse of the house only, & in the Book of Assise 29. rent was granted *percipiend. de Abbathia*, the Scite of the Abby shall be only put in view of the same.

Note that a man letteth a Mannor for terme of years, in which there are many Copiholders, and after a Copiholder dieth, the tenant for years of the Mannor may grant Copihold land for lives, and may admit tenants to hold by Copy, &c. and good although the Farmor holdeth the Mannor but at will, or *durante beneplacito*, *Brook in titulo de Ten. per Copy.* 27.

Copiholds by Tenants for years of a Mannor.

A lease of a Park is made for years to me, my Landlord doth except the woods and underwoods, Shovelers, Herons, and other Fowles which do breed in the same; if the Landlord do take the Fowls; if I being his tenant do bring my action of trespassse against him, he may justifie by reason of this exception: And if I take the Fowls breeding there, my Landlord may bring his action of trespassse against me by reason of this exception: And my Landlord by this exception shall have all the woods and trees, and all that which cometh by reason of them and the soil, but I being his tenant shall have the pastures and feedings under the trees. 14.H.8.

Exceptions, Reservations.

If

Exceptions, &
Reservations.

If the Lessor except and reserve a pond or river, he shall have the fish and the Fowls therein being or breeding.

If he doth except a Warren, he shall have all the Conies, and yet the Warren is but a Liberty.

Egresse and re-
gresse of com-
mon right to
the reserver, to
have the things
reserved.

And if exception and reservation is of a Parlor, Chamber, or Stable, the Law doth give me of common right, being lease, or way, or mean to the things excepted to have them, which is free egresse and regresse into the same, *per Brudenell Justice.* 14. H. 8.

What things
Tenants for
years have, be-
ing no excep-
tion.

But Tenant for years shall possesse all things, as grasse, quarries, coles, conies, partridges, mines, and hedge-boots, plow-boot, house boot, and all other things not excepted, 14. H. 8. *per. Cur.*

Exception in a
Lease.

Note that the nature of an exception is to restrain things before spoken of, and of new things, *Trin. 36. H. 8. Wiltshire.*

And note that a reservation or exception cannot be good to him which giveth nothing, nor to him which hath nothing in the reversion.

For if I am seised of land in fee, and give the same land in taile, reserving to me and to my wife rents, &c. my wife hath nothing by this reservation because she did give nothing, nor hath nothing in the reversion.

And if the husband doth give land in fee to hold to him, she hath no interest herein.

If the Landlord or any other by his direction, or commandement doth take any of the Land away

away demised, or any small part thereof demised, or let to farm to his Tenant for years, he hath herewith suspended his whole rent, and hath lost the same during his lease, or untill such time as the Tenant hath re-entered unto the same parcell so withholden, before which time the Landlord hath no right to have any rent.

But if the Tenant for years do re-enter into the same, then the rent doth revive and commeth again to the Landlord, but only from the time of the re-entry made by the Tenant for years, and in this case the Law is clear, *per Foster Instice.*

Rent suspended revived by re-entry again of the Tenant.

I make a lease for terme of yeares reserving rent, and after an Obligation is made to me for payment of this Rent; If I after doe enter into any part or parcell of this land I have lost the penalty of this Obligation, because the penalty depended upon an intire thing, parcell of which is discharged by my selfe. *Pas. 4. H. 7. fo. 6.*

Obligation void to the Lessor, if he do enter into part of the land demised.

A lease is made to me for eight yeares if I lived so long, and after, the Lessor by Indenture demised the same to another for sixty yeares, If I being the first tenant for yeares die, the second tenant shall have the land for the residue of the yeares. *Chedingtons Case. 15. Eliz. R. P. Plowden Com. 434.*

Lease made to begin after a former lease.

Land is demised to me for yeares, by Deed indented rendring 10. l. Rent yearly to my Landlord, &c. at the Feast of *Easter*, &c. And in the same Indenture, I doe bind my selfe to pay the same Rent, at the day comprehended in the Indenture, or if I doe bind my selfe to pay this Rent, by

A bond to pay rent in an Indenture.

Tenant for
years bound to
seek his Land-
lord to pay
rent.

Tenant not
bound to pay
rent but on the
ground.

Acceptance of
rent.

Rent tendred,
Landlord refuseth.

by another Deed to my Land-lord as is comprehended in the Indenture; This is a Collaterall surety for the payment of this Rent, and doth not depend upon the Leassee according to the matter of the Lease, For in this case I which am Tenant for yeares, am bound to seeke my Land-lord to pay him his Rent in every place where hee may be found, otherwise I have forfeited my Bond: But otherwise it is if a man letteth Land to me by Indenture for years, rendring rent as before; And by the same Indenture, I and my Land-lord are bound each to another, that both of us shall perform the Covenants in the Indentures, I which am the Tenant am not bound to pay this Rent in any place but upon the Land, this diversity adjudged to be good. 22.H.6.fo.57.

Land is demised to me for yeares by Deed indented, rendring 10.l. Rent yearely to my Land-lord at the Feast of *Easter*, &c. And for default of payment thereof, I doe binde my selfe in a penalty, if at the day the 10. l. is demanded, And I being Tenant for yeares doe not pay the Rent, and yet after my Land-lord doth accept the Rent, this acceptance doth not conclude my Land-lord; But that he may recover the penalty *per Cur.*

And if Land is demised for yeares rendring Rent as aforesaid, and for default of payment at the day, the Tenant bindeth himselfe in a penalty, at the day he rendreth the Rent, and the Land-lord doth refuse it, the penalty thereby is saved: And if the Landlord after doth demand the Rent, and the Tenant refuse to pay it, the Penalty

ty

ty is saved, and shall never be forfeited nor recovered. *per Cur.* 41. *Ed.* 3. & 46. *Ed.* 3.

The husband and wife selleth, and maketh a feoffment of the land of his wife; And the Vendee or buyer by the same Deed, or Indenture doth Covenant to pay an Annuity to them during their lives, the husband dieth, the woman receiveth 10. l. which was her Annuity, This receipt was no barre against her but that she may recover the land by a *Cui in vita*, for this Rent was due to her by Covenant, or Annuity, and not by reservation of Rent; But if the husband and wife had made a feoffment of the land of the wife, and by the same feoffment had reserved Rent, and after the decease of her husband she accepteth the rent, this doth barre her, but if her husband alone make the feoffment, shee may neverthelesse that she received that Rent, recover her land by her Writ *Cui in vita contradicere non potuit*, because she was not privie to her husbands feoffment. 26. *H.* 8. f. 2. *per Cur.* Tenant in taile, the remainder over maketh a lease for yeares, rendring rent and dyeth without issue, and he in the remainder accepteth rent, This acceptance doth not binde him, for when the state in taile was determined, all which was comprised in that was determined; And thus the lease void, For he in the remainder claimeth nothing by the Leassor. 1. *Ed.* 6.

Rent by Covenant due, or Annuity, or by Reservation, or rendring of rent by yeelding and paying, a difference.

Acceptance of rent by a lease.

Acceptance of rent of him which is in remainder in taile.

If a Tenant in tail, or a man seised of land in the right of his wife, demiseth land for yeares and dieth, and the wife, the issue in taile accepteth the rent; The Lease is affirmed to bee good. 2. *Hen.* 7. 38. A

Acceptance of rent after the lease.

Acceptance of
a new leafe
avoydeth the
first leafe.

Acceptance of
rent by the
Succellor of a
Bifhop.

Acceptance of
rent by a Par-
fon or Pre-
bend.

Wafte by Te-
nant for life,
and he in rever-
fion.

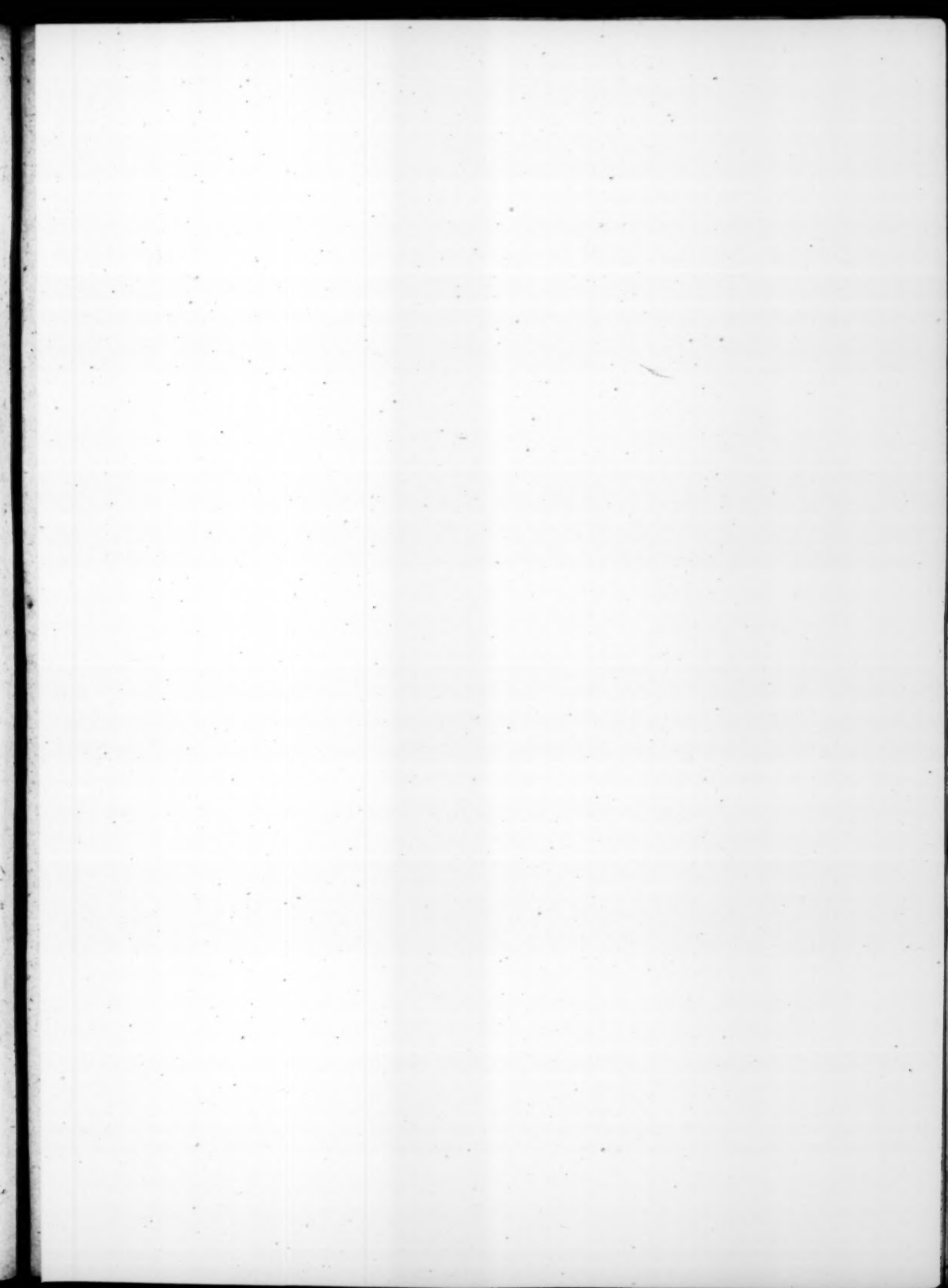
Leafe by a
Parfon or Vi-
car and a Ma-
fter of a Col-
ledge.

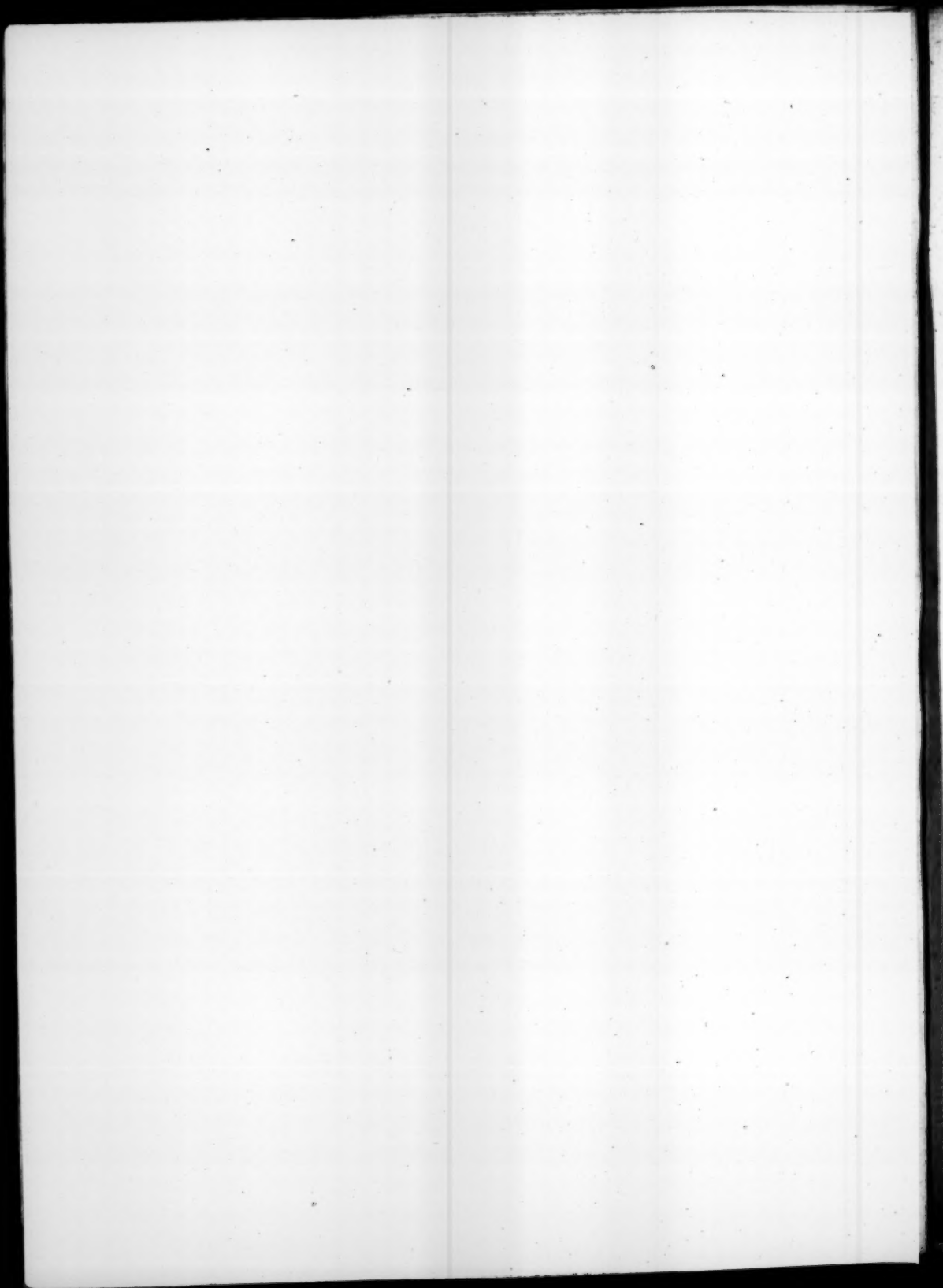
A man having a leafe for years, and taketh a new Leafe of the fame, The acceptance of the fecond leafe maketh the first leafe void, *per Brudenell & Brooke* Juftices. 14. H. 8. fo. 15.

A Bifhop demifeth land of his Bifhopricke for yeares rendring rent and dieth, and his fuccellor accepteth the Rent, this acceptance doth bind him; For the Bifhop hath fee, and may have a Writ of entrie *sine affensu capitali*; But otherwife it is in cafe of a Parfon, or Prebend, which can have nothing but a *Iuris utrum*. 14. H. 8. fo. 12. *per Carrell*. 12. H. 7. fo. 38. But looke the Statute of *Eli*. 13. cap. 10. That a Bifhop, Deane, and Chapter, may make a leafe for 21. years or three lives, *Ceo* Statute doth not extend to Bifhops but a Statute *Anno primo Eli*. doth extend to Bifhops.

Tenant for like, and he in reverfion doe joyn to let a leafe for life, and the Tenant maketh wafte, both of them fhall joyne in a Writ of wafte, and the Tenant for life fhall recover the freehold and he in reverfion fhall recover the damages, and fo it followeth that the leafe is the leafe of the Tenant for life, as well as the leafe of him in reverfion. 27. H. 8. 13.

A leafe for yeares is made by a Parfon, or Vicar, of lands, and after doe change, The fuccellor may enter, for his, or their ftate doe ceafe as well by permutation or change, as by death; But a leafe made by a Mafter of a Colledge, which hath a Colledge, and a common Seale, the Law is otherwife, for in this the fuccellor cannot enter *per Cur.*





Cur. 2. Henr. 4. fol. 5.

Land is letten *quarto Die Januarii*, To have and to hold, &c. for forty years rendring rent at the Feast of *S. Michael* the Archangell, and at *Easter* by eaven portions; And if a man *secundo Die Augusti* graunteh Annuity to be paid annually at the Feast of the *Annuntiation* and *S. Michael* 20. l. yet the Grauntce shall have his rent first at *Mich.* and not lose it, *Mich. 4. Maria*, adjudged to be good Law.

Rent to be paid at first feast comming.

A lease is made for life, and after the Lessor graunteth the reversion unto another, after the death of *I. G.* the tenant for life, for 21. years then next following, this is good without Attournment, because it hath its commencement after the death of the Tenant for life; So that the tenant for life shall not be attendant unto the Grauntce, nor shall make an advowrie upon him, nor yet an action of waste, nor any thing else, *per Iudicium Cur. in Throgmorton & Tracey, 3. Maria. Plowden Commentar. fol. 134.*

Acceptance of Rent.

Tenant in Dower letteth land for years rendring rent, and dieth, the lease is voyd, and if the heire doth accept the rent, it doth not make the lease good, for it was voyd at the first; but otherwise it is of leases which are voydable; And the like Law is of a Parson or a Prebend, which make a lease for years and die, *Mich. 2. H. 4. fo. 5. 11. H. 4. 17. 22. H. 8. per Fitzh. James, & Inglesfield Justices.*

Lease by Tenant in Dower,

Acceptance of Rent.

Tenant in taile demiseth his Land for twenty years, rendring rent, and dieth, and the lease let-

P

teth

Rent upon a
Lease
cannot be ap-
portioned in
some Cases.

Acceptance of
Rent.

Plough-boote,
house-boote,
fire-boote,
hedge-boote.

A house rui-
nous demised.

teth the same over for ten yeares, and the heire of the tenant in taile accepteth the rent of the second Lessee, this acceptance of the rent is no affirmation of the Lease, for there is no privity between the second Lessee and him, but otherwise if he had paid the rent as Bayliffe to the first Lessee.

And if the first Lessee had letten over all his terme in parcell of the land first demised to him and to his Assignee, payeth the rent to the issue in taile, this affirmeth the whole lease because the rent upon a lease cannot be apportioned, 31. H. 8.

Land letten to hold at will rendring rent and dyeth, and the heire accepteth the rent, this acceptance maketh not the lease good, for acceptance of rent cannot make a void lease to be good, a voyded lease by a Reentrie or such like, 14. H. 8.

And note that where the Reversion is determined and the name of succession altered, acceptance of Rent is of no purpose, for if tenant in Dower or any particular Tenant make a Lease reserving Rent and dye, and hee in the Reversion or Remainder accept the rent, this acceptance doth not affirm the lease, for the Reversion is altered, Trin. 7. Eliz. Dyer. 240.

Note that tenant for years shall have hedgboot and ploughboot houseboot and hayboot, by law of Common right being not expressed or otherwise excepted in the lease, but if he taketh more then is necessary, action of Waste is lyable against him, Hil. 21. H. 5. & 12. H. 8.

If a house ruinous at the time of the making the

the lease before the entring of the Tenant; or if the timber there, as beames, groundels, &c. are putrified and consumed, or within the terme doe fall downe, the tenant shall not be charged in law therewith to reparaire except hee be bound to reparaire it by Covenant, yet he may fell timber and trees on the same ground to doe reparations, and justifie the same, *Trin. 12. H. 8.*

But if the houses are in decay at the making of the lease or putrified, and the Farmour by his Indenture Covenanteth to reparaire the same and doth not, he is to bee punished in an Action of Waste.

But if the Leasour or Landlord doe covenant to reparaire and will not, his tenant for yeares may reparaire and stay so much money in his hands in the payment of his rent as will discharge the same, and he may fell timber trees for the reparings and reparations thereof if it may be found upon the ground or land demised, *Trin. 12. H. 8.*

Termor for years by Indenture doth Covenant to reparaire at his owne proper costs and charges a house decayed in Groundcelling, the Tenant for yeares felleth trees upon the same land and reparaireth with the same, the Land-lord bringeth his action of Waste against him, the tenant for yeares doth justifie the felling for reparations, the Leasour cannot replie to himselfe by reason of the Covenant, for as unto that he must helpe himselfe by action of Covenant, and so if the Landlord or Leasour doth Covenant to reparaire the house, &c. and will not, the Lessee or tenant for

Leasour doth A
Covenant to reparaire

A Covenant
to reparaire.

Leasour doth
Covenant to
reparaire, and
doth not.
Tenant repai-
ring may re-
taine so much
rent.
Tenant felleth
trees to reparaire

Leasour doth A
Covenant to reparaire

yeares may fell Timber and repaire the house, &c. so that the Timber doe grow or stand upon the same ground, and justifie the same in an action of Waste brought against him, *Pas. 3. Eliz.*

A house burned
being demised.

Tenant for yeares is, &c. and his house is burned against his will by his servants, or by any persons destroyed or burned, hee shall be punished therefore, except it be burned with thunder or lightning, or otherwise by the Act of God, or by the Kings enemies, *Thin. 12. H. 8. fo. 8.*

A house burned
in default
of Executors.

Tenant for yeares doth Covenant for him, his Executors, &c. to sustaine and repaire the house at his and their owne proper costs and charges, the principall heart in Timber worke being decayed for default of reparations, or otherwise in default of the Tenant or his Executors onely excepted, the house is after burned in default of the Executors, adjudged by great advice, that in an action of Covenant brought against Executors damages shall be recovered of the goods of the Testators and not of their own goods, if the goods of the Testator are not sufficient, *15. Eliz.*

An exception
in a Lease but
temporary.

Thomson and his wife Farmers of a Mesuage called by the signe of three Conies in Fleetstreet, *Thompson* maketh a lease of parcell of the terme, (with these words, Except the shops to my purpose) he dyeth, his wife entreteth into the Shops who is ejected by *ejectione firma*, adjudged *per Cur.* that the exceptions of the Shops by *Thompson* that was but temporary to himselfe, that is, but during his owne life, because these words Executors or Assignes were not expressed in the exception,

tion, and that the exception of Shops in the lease is void, because it is repugnant to the first letting of the Shops.

Exception in a Lease repugnant.

In *ejectione firme*, the Tenant for yeares declareth of a Lease made to him by the eight day of May, &c. to have and to hold to him for one and twenty yeares from thence next following, by vertue whereof after that is the same day he entered, &c. it was adjudged to be good, for it cannot be understood that he entered before his terme did begin as a disseisor, for these words (from thence) is to be understood that he should enter immediately after the delivery of the lease and not immediately after the date, and this word (after) declareth that hee entered not before the lease was made, *Trin. 11. Eliz.*

Entry into a Lease.

A Lease made for 20. yeares to three men, and after two of them take a new lease for 30. yeares to begin after the lease of 20. yeares or immediately after the death of their companion, if hee chance to dye within 20. yeares he dyeth within three yeares after, the Justices did doubt whether it is in election of the other two Leasees to begin their second lease or terme or not untill the 20. yeares are expired.

A Lease for three men, and two of them take a new Lease.

The Reversion of a terme of yeares was granted to the use of the Grauntor for life, and after his decease unto the use of his Executors and Assignes for the terme of 21. yeares; the Remainder over in Taile, & after the Grauntor is attainted of treason and dyeth intestate without assignement, the opinion of the Justices was that the King

The King is interested in the land demised where he in the Reversion is tainted of treason.

In expectancy.

should have the terme as aforesaid as forfeited to him, for the Grauntor had interest in the same, for it may well remaine in himselfe in expectancy, neverthelesse his estate for life, for if his Executors doe take it, they take it not as purchasers to their owne use, but they shall have the same as Assets.

Lease as extinct.

A man hath a lease as Executor to *Acher*, and after he doth purchase the reversion of the land in fee, the lease is extinct, yet the Lease shall bee Assets against the Executors, *per Hales Justice, & Wharewood, 2.E.5.*

Executor of a Lease purchases the Reversion, the Lease is void,

except there is a meane lease.

But where a man hath such a lease as an Executor, and there is a meane lease in Reversion for yeares, and he after doth purchase the Reversion in fee, the first lease must remaine by reason of the meane remainder, and if a man doth let mee land for ten yeares, and after letteth the same land to another for 20. yeares, if the first Lessee doth purchase the land in fee, yet the first Lease is not extinct because the second lease which is 20. yeares is a meane betweene the first Lessee and the Fee simple which is an impediment of Extinguishment, *2.E.6.fo.13. per Hales Justice.*

Tenant for yeares commit Waste.

If a Termor for yeares doe commit Waste in a hedgrow which doe incompasse and inviron a pasture, nothing shall be recovered but the place wasted, that is, but the circuit of the trees and not the whole pasture, *Bromley Chiefe Justice.*

And the cutting downe of Oakes of the age of 10. yeares or eight yeares is Waste, because they after may be timber, *per Bromley & Hales Justices.*

But

But where there is no wood growing in a wood but Underwood, the Termor cannot cut downe all; but otherwise it is where Underwood doth grow amongst Oakes, Ashes and other great trees, for here the Termor may cut downe all the Underwood, and the Termor for yeares may take Oakes and Ashes, and such other which are seasonable, and which usually hath beene felled every twenty yeares, or sixteene yeares, if it is seasonably called *Silva Cedua*, 13. H. 7. fo. 21. per Brian, Brooke in titulo de Waste 136. H. 8. 359.

Tenant for yeares, what wood he may fell.

Silva Cedua.

A man letteth lands for yeares rendring rent at the Feast of S. Michael, &c. with other Covenants, if the Tenant is bound precisely to pay the rent, in this Case he must seeke the Leasour, but if he is bound to performe the Covenants in the Indentures, the Tender upon the land sufficeth, for the payment is of the nature of the rent reserved, but the Law is otherwise in the Case before, Brooke in Tender 20. en le case supra, 196. 22. H. 6. 57.

Tenant for yeares bound by Obligation to pay his rent: bound to performe Covenants.

Note that if a Common person letteth lands for yeares rendring rent with a Clause of reentry, and after he granteth the Reversion over and the Tenant doth attourne, the Grauntee may enter for the Condition broken by the expresse words of the Statute; and the same Law is of the Graunts made by the King by the equity of the same Statute, Brook tit. Entry Congeable, 139.

And if a man letteth land for yeares rendring rent, and for default of payment a Reentry, it sufficeth for the Lessee for yeares to tender the rent

The tender of Rent the last day of the month.

upon the land the last hower of the last day of the Month, if the money may be told or numbred in the meane time, and so may the Leasour demand the same the last hower of the last day of the month, *Brooke in Tender* 41.

The tender of
Rent the last
day of the
month.

And if a man letteth land the fourth day of January, to have & to hold for 40. yeares yeelding and paying therfore yearly at the Feast of *S. Michael* and Easter by even portions 10. l. the Tenant must pay his rent at Easter and Michaelmas by even portions, and the Leasour shall not lose his Rent at Easter, all these three Cases agreed for Law 4. *Marie*, 1. *Com.* 34. 4. *Marie Com.* 177. & 172. 6. *H.* 7. fo. 3. *Brooke in Leases* 65. 4. & 5. *E.* 6. *Com.* 70.

A Lease untill
the Tenant
hath levied
100. l.

And note *per Cur.* that if a man letteth land unto another untill the Tenant for yeares hath levied 40. l. this is a good Lease neverthelesse the incertainty thereof, 2. *Marie* 1. 462. 14. *H.* 8. 14. *per Brudenell Justice*, *Brooke in Leases* 67.

Note that if a man doth let a Mannor for terme of yeares in which there are many Copiholders, and after a Copiholder dieth, the Termor of the Mannor may grant the Copihold land for three lives and may admit Tenants by Copie, for the Custome of England is, that the Lord for the time being may admit Copihold Tenants by Copie, &c. although that he hath the Mannor to hold at will, or *durante beneplacito*, *Brooke in Tenant per Copie*, 27.

Lease untill a
100. l. is paid, is
Lease at will.

Note that if a man letteth land to me, to have and to hold to me till a 100. l. be paid without Li-

very.

very and seisin, this is but a Lease at will because of the incertainty, but if the Livery is made the Lease is good to me during my life, upon Condition implied, the lease to cease upon the 100.l. levied, *Brooke Leases* 67. per *Bromely Justice & alios.*

A man letteth land for terme of life upon Condition that if the tenant do not goe to Rome by such a day, that his estate should be void, and after the Leasour doth graunt the Reversion to another and the tenant doth attourne and doth not goe to Rome, yet the Lease is not void untill he in the Reversion hath made his entry, *Bromley Chiefe Justice, Brooke in Condition* 245. in fine.

Lease upon Condition, entry by him in Reversion.

Note that where a man doth let lands by years the Remainder over for life, the Remainder in fee, or reserveth the Reversion to himselfe, here he in the Remainder for terme of life may surrender to him in the Reversion or to him in the Remainder in fee, and the estate of the Tenant for yeares is no impediment; for although this cannot give the possession of the land, yet this doth give the possession of the freehold which is the same which is surrendered, *Perkins* 155.

Surrender of Tenant for life to him in Reversion.

I let a house and 300. acres of land for life, and after I grant the Reversion &c. *Habend* the aforesaid house, lands and teneiments, &c. from the Feast of S. *Michael* next after the death or determination or interest of the Tenant for life for 21. yeares, the tenant for life dyeth before Attournement, yet the graunt of the Reversion is good, because the words in the *Habendum* of the house

A Reversion granted, *habed.* for 21. yeares after the death of the tenant for life.

house aforesaid, and land is intended to be a lease for Rent which was reserved thereupon, and therefore it was adjudged a good Lease without Attournement, *per Browne, Saunders & Samford Justices.*

A Lease to an use.

But *Brooke* Chiefe Justice said that it was but a grant in Reversion and no Lease, but that the grant was good, so that the Tenant for life shall not be attendant unto the grant nor make Avowry upon him, nor shall have an action of Waste, nor yet any other thing, *per Cur. Brooke* in Attournement, 60. in Leases, 37. the Case *inter Throgmorton & Tracie.*

A Lease to uses.

If a man doe give a lease for yeares or land for yeares unto an use, this is good neverthelesse the Statute, for the Statute is intended to avoid Chattels to Uses to defraud Creditors onely, as it appeareth by the Preamble of the said Statute, *Brooks, Feoffment to uses, 60. 3. H. 7. cap. 4.*

Lease by Tenant in Tayle.

If Tenant in Tayle letteth land for twenty yeares rendring Rent and dyeth, the Tenant for yeares lets the same over to another man for 10. yeares and his heire receiveth the rent of the second Lessee, the receipt of the rent is no affirmation of the Lease, for there is no privity betweene him and the second Lessee; but otherwise it is if he payeth the Rent as Bayliffe of the first Lessee, and if the first Lessee hath let over all his terme in the parcell of the land letten, and his Assignee doth pay the Rent to the issue in Tayle, this is an affirmation of the whole lease, for Rent upon a lease cannot be apportioned, *Brooke in Acceptance 13.*

Privity.

I demise lands to A. for so many yeares as I. G. doth name, and after, I. G. in my life time doth nominate certaine yeares; this lease is good for these yeares named, *per Weston Justice, Plowden Com. fo. 273.*

A Lease for yeares as I. G. doth name.

A man is seised of land in Right of his wife, and doth make a lease of the same, &c. and after dyeth, the wife may enter, but if tenant for yeares doe sow the land in the life of the husband, the Tenant shall have the Corne in the land, *Libro Assis. 19.*

The Lessee to have the crop of Corne.

A lease is made for 10. yeares, and after the Leasour demised the same for 20. yeares, this is a good lease for the last 10. yeares of the first 20. yeares, which are to begin after the first 10. yeares finished, 26. H. 8. *Brooke, in Leases 48. & 35.*

A Lease for 10. yeares, after for 20. yeares.

A lease made the first day of January, to begin at *Michaelmasse* then next following, the Tenant for yeares may grant and sel this lease and termes before *Michaelmasse* next, but he cannot release and surrender this lease, 22. E. 4. *Brooke, in grants 110.*

Tenant may sell his Lease before his entry.

If the Landlord doe expell and put out the Executors of his Tenant for yeares from their lease, the Executors shall have an especiall Action upon the Case against him and the Writ must be Summons, and not a *pone per vadios & plegios* as other writs of Trespasse, *Fitzherbert in son action sur le Case.*

Action on the Case by Executors of the Lessee against the Leasour.

A lease made of lands for yeares in the which there is a Myne of metall, I after cannot enter and take

A Lease of land where is Metall.

A Lease of
lands, Eject-
ment.

A new Lease,
a surrender of
the first.

A graunt to
the tenant for
yeares to hold
over his terme
without Livery
and seisin.

take the Metall on the land, nor yet the Trees,
4.E.4.fo.37.

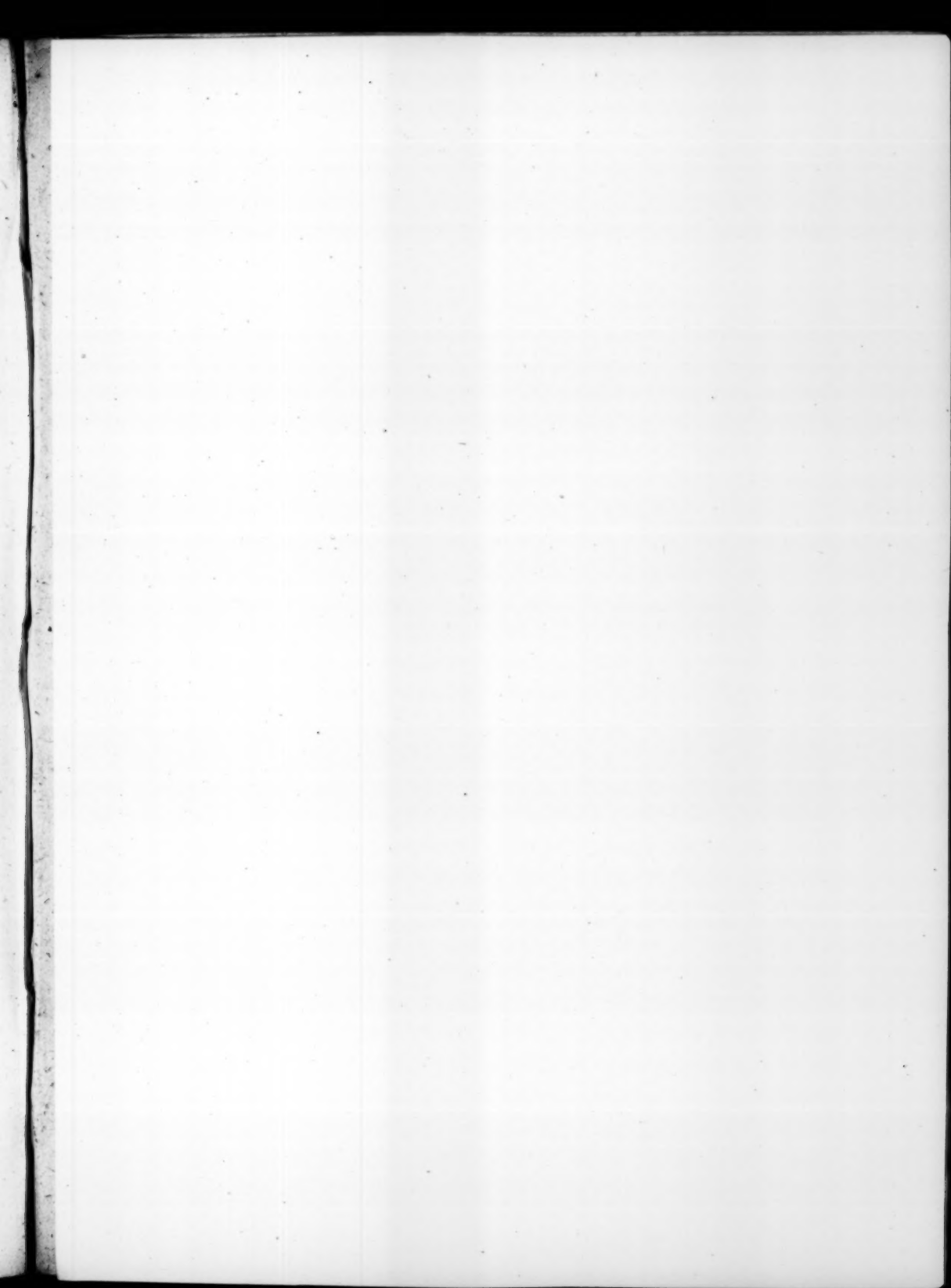
In a Writ of *Ejectione* the terme of yeares is to
be recovered, *Hil.6.Eliz.*

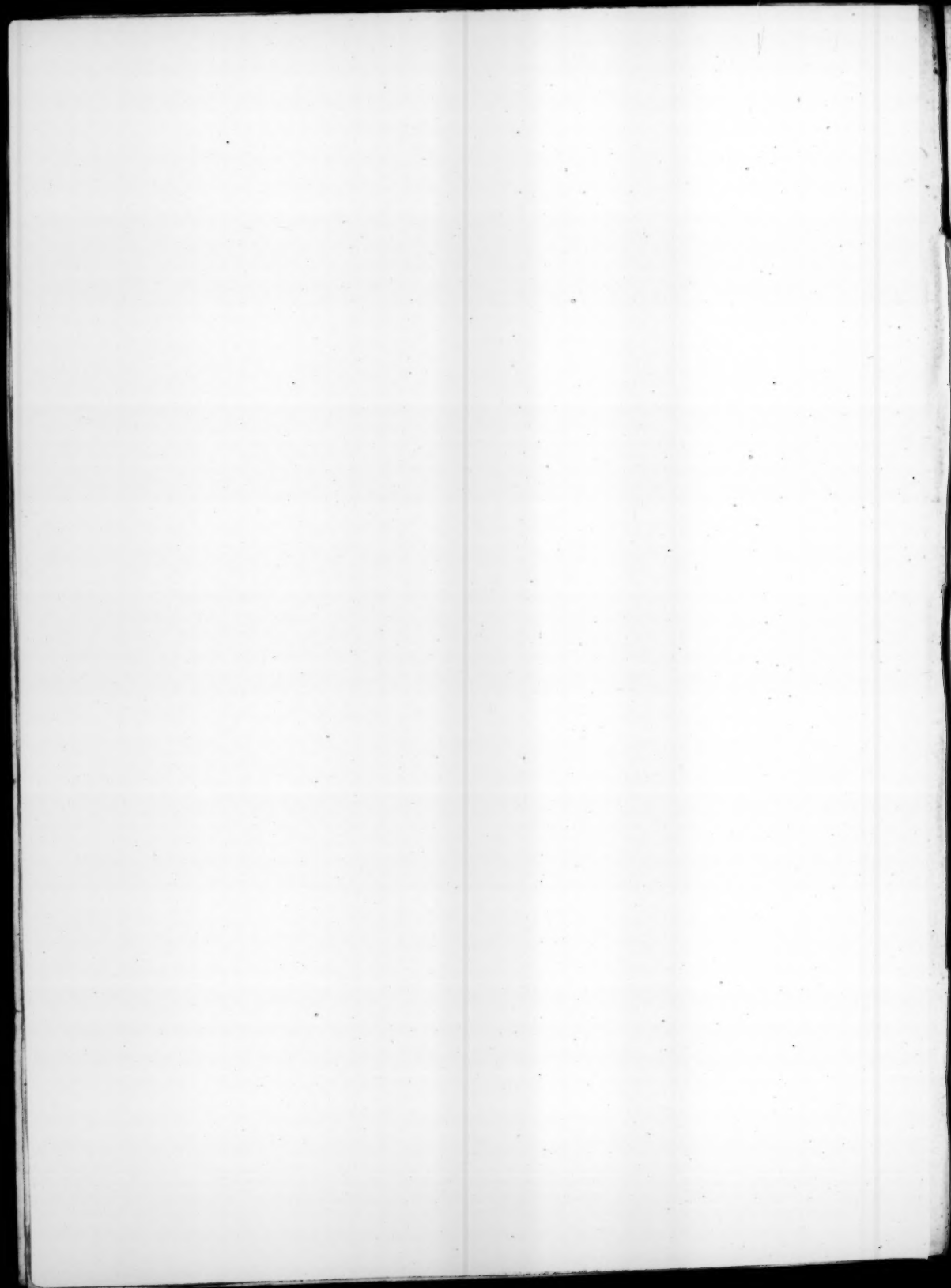
A lease is made to *Edmond Corbert* for yeares,
after he taketh a new lease, it was adjudged to be
a surrender of the first lease although it were not in
issue at the time of the taking.

A lease is made for yeares, and after the Leasor
doth Covenant and grant to the Tenant for years
that he shal hold the land that he demised to him,
to himselfe, his wife, and if she died, to his next
wife, during the life of the Leasor, and the graunt
was made without livery & seisin, it was adjudged
by the opinion of 3. Justices that this graunt was
no surrender or Confirmation of the first lease &
terme of yeares, but onely a meere Covenant; but
Weston Justice was of a contrary minde by reason
of this word Graunt, *Sacforde Case*, 10.Eliz.

Note that the Statute of 32. H.8. cap 34. doth
ordaine, that he or they to whom Reversions of
lands, &c. are granted shall take advantage of
Conditions & Covenants against the Tenants for
yeares or for life, as the Leasor or, &c. might have
done before, and the Leasees, &c. shall have the
same advantages against the unto whom such Re-
versions are granted as they might have had against
the Grauntors or Leasors, *Stat.32.H.8.ca.34.*

A Lease was made of three Manors paying
6.l. rent for one, 5.l. for another, and 10.l. rent
for the third yearly, with a Condition of Re-
entry for not paying the rent, the Leasor granteth
the





the Reversion of one Mesuage belonging to one of the Mannors to *A.* and the Farmour doth at-
 taine tenant to him, the Rent of one Mannor is
 unpaid, three questions were moved, the first was
 whether the rent was severall or not, three Ju-
 stices opinions that they were, but *Dyer* chiefe
 Justice contrary, because the Reversion was intire
 and the rent accessory: the second question was,
 whether the Bargaine which bought the Rever-
 sion of three Mannors is Grauntee and within
 compasse of the Statute of 32. H. 8. cap. 34. and
 may take advantage by the Condition broken by
 the Statute; as to Reenter for not payment of
 Rent, the opinion of the Justices was that the
 Statute did give the advantage of the Reentry un-
 to him: the third question whether the Bargaine
 which bought the Mesuages belonging to one of
 the Mannors, and parcell of the Reversion of that
 Mannor shal have the benefit of the said Statute of
 32. H. 8. to Reenter: Opinion of all the Justices
 that he could not Reenter for not paying Rent,
 neverthelesse the Statute for the Reversion gran-
 ted must be expectant upon a terme of yeares, or
 for terme of life and not upon land intayled, and
 that the graunt of the Reversion must bee of the
 whole and intire state as it was in the person of
 the Leasour and not in parcell of the same, *Winters*
Case, *Zekidels Case*, *Hil. 14. Eliz.*

So note this, that before this Statute of 32. H.
 8. no Reentry was given for non-payment of
 rent by the Common Law but to the Leasor or
 Donor, but now to the Grauntee in Reversion if

the

Leasee to have
 action against
 the Grauntee
 in Reversion.

the whole and no parcell be graunted to him, and he to have such Actions against the Tenant as the Leasor might, and the Tenant to have like against him.

Leasee upon Condition that his estate shall cease, and that it shall be lawfull, &c. to reenter, a difference.

I make a Lease for yeares or for life, upon Condition that my Tenant shall goe to Rome such a day, and if not, that then his estate should cease, and I after do graunt the Reversion of the same Rent unto another, and my Tenant attourneth, and after the Condition is broken, he which hath my Reversion may enter, for by breaking the Condition his estate was void and determined, but if the Condition had beene that then it should bee lawfull for mee, &c. to reenter, the Grauntee cannot enter, *Hil. 1. H. 7. fo. 17.* for the Condition broken.

The Stat. of 32. H. 8. for Reentry.

But now by the Statute 32. H. 8. cap. 34. the Grauntee in Reversion may reenter and have a-
 ction against the Tenant as the Leasor might have done, if the estate had beene continued in him, so that he hath the intire and whole Reversion granted to him and not parcell of the same, and the Tenant may have the like Actions against him.

Concessit in a Lease, and not Demisit.

A Lease is made with these words, I do Covenant and grant to a man that he shall have a 100. acres lying in Dunmow for 40. acres, this Lease is good although this word demiseth is not, for this word (*concessit*) is as effectuall and strong as this word (*demisit*) in a Lease, 37. H. 8. *Brook in titulo Leases, 60. P. Ed. 6. in Cancellar.*

A Lease is made of a house *cum pertin.* no land doth

doth passe, but if I let my house with all the lands thereto belonging, the lands doe passe and the Lease is good, *Plowden his Com.* 170. 23. *H. 8. in Feoffment, Brook* 53. *Mick.* 2. *Maria.*

Note that if a man letteth land for yeares by Deed pole or by word, he may avoid this Lease to say he had nothing in the land at the time of the demise, but otherwise the Law is if the Lease is made by Indenture, for this is an Estoppel, 38. *H. 8. per lege Brooke in Estoppel* 8. *Luttrell* 11. but *Danby* Justice contrary, 34. *H. 6. fo.* 48.

Note that if the Leasor and his Tenant for yeares will acknowledge a fine of their Tenements and lands to me *conit oia quo*, and I render by the same fine againe the same lands, &c. unto the Tenant for yeares to hold the said lands for 60. yeares rendring and paying to mee yearly 40. l. rent with a clause of Distresse, and by the same fine I doe graunt unto the Leasor or Landlord and to his heires, the Reversion of the same lands, &c. this is good, and best order to assure and make good a lease for yeares made by Tenant in Taile, practised by *Robert* Chief Justice and now used at this day, 36. *H. 8. 285. Brook in Fines levied* 118.

A Parson demiseth land for yeares rendring rent and dyeth, the Successor of him receiveth the rent, this receipt of Rent doth not affirme or make the lease good, for he hath no fee simple nor can he have a Writ of right, but a *Writ utrum*, therefore the receipt of the Rent by the Successor doth not affirme the lease or make it good, for

it

Lease by Deed pole or by word avoyded if nothing in at making unless by Indenture.

A lease by fine, a lease by tenant in Taile good by fine.

Acceptance of Rent.

it was void by the death of the Parson which did let the land, 32. H. 8. 172. 2. 8. 6. 38 1. 44. E. 3. 11. per Cur. 18.

A Lease for 20 yeares, and after a Lease for 40 yeares.

If I demise land for 20 yeares, & after I do let the same land to another for 40 yeares, the second lease doth take effect for 40 yeares after the 20 yeares are expired, 37. H. 8. 298. 2. E. 4. f. 11. *Brook in Leas.* 35.

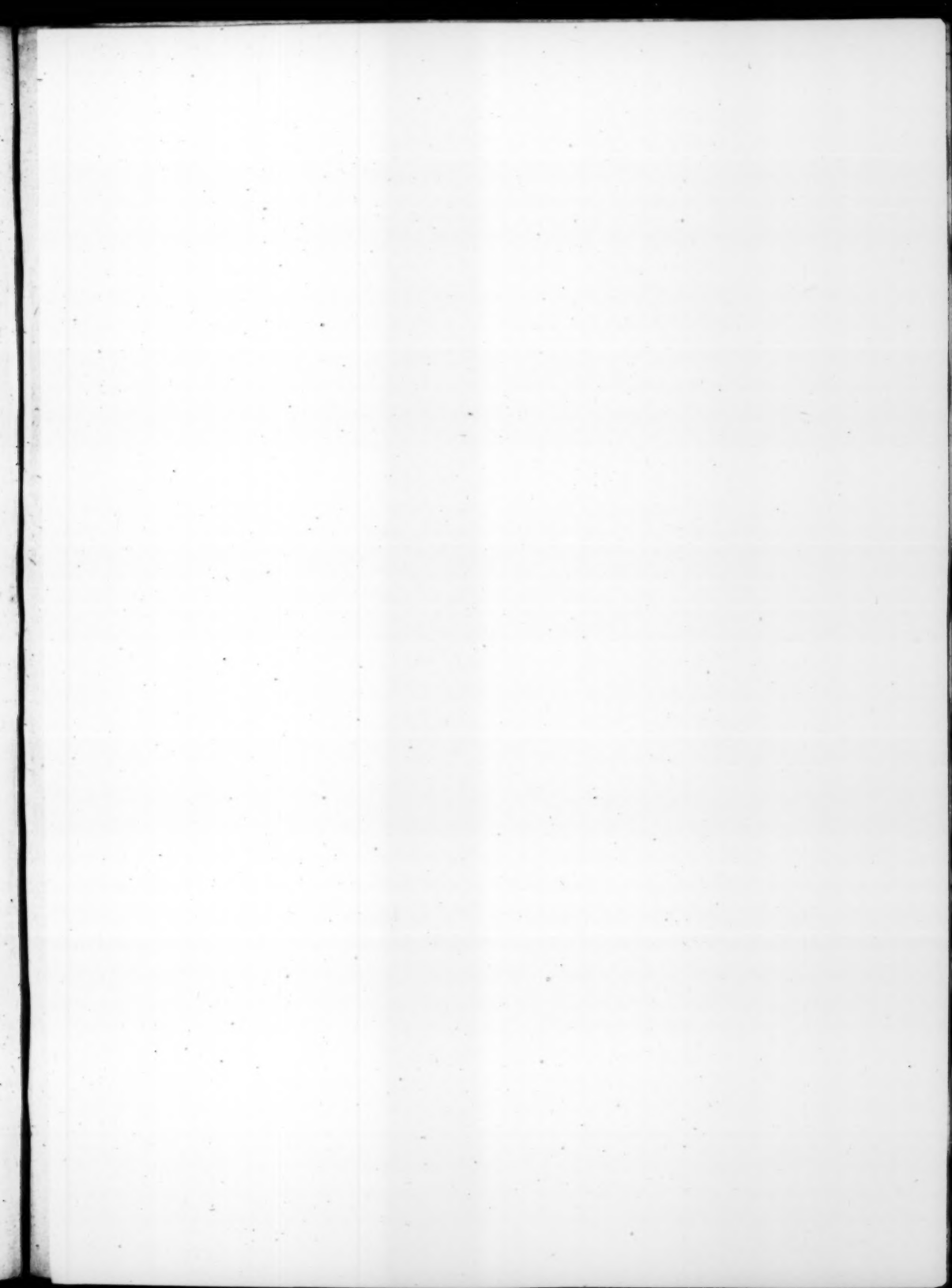
The husband doth let land in which his wife is a joynt purchaser.

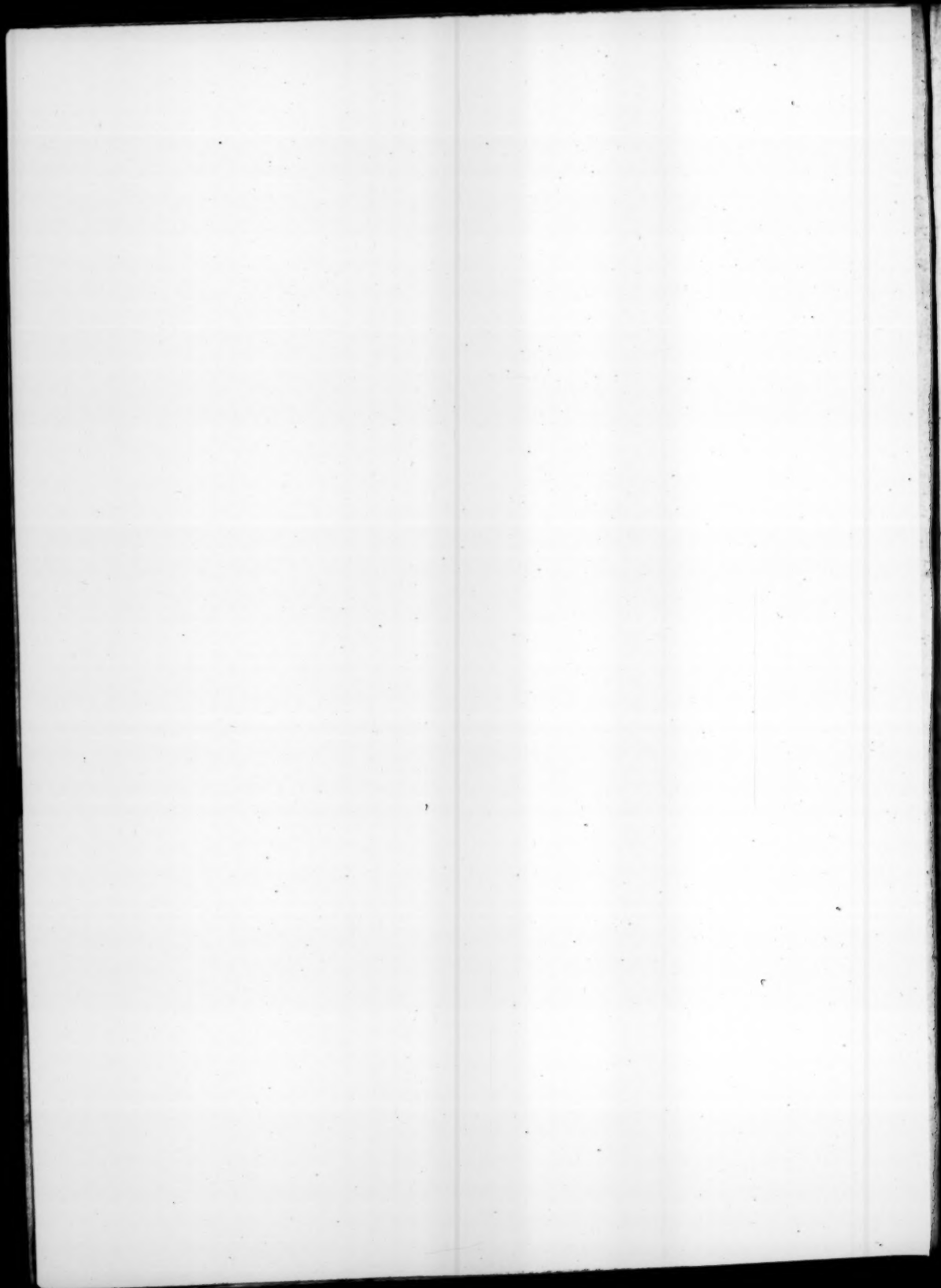
A man and his wife are joynt purchasers of lands to them and to the heires of the husband, after the husband maketh a Lease for yeares and dyeth, and the wife entreteth, this avoydeth the Lease for yeares during her life, but if she dye during the terme, then the rest of the terme remaineth good to the Leasors for yeares against the heires of her husband, and the like Law is if a rent Charge is granted out of the Land, 37. Hen. 8. fol. 301.

A Lease for life, and after a lease for yeares of the same is void.

Land is demised to me for terme of my life, and after he demiseth the same lands to another man for yeares, the second Lease is void except it had beene by a Graunt of Reversion with an Attournement, for the freehold is more worthy in the Law and more durable then a Lease for yeares is, but if the Lessee dyeth before the terme of yeares is expired, then the Lease for yeares is good for the rest of the yeares to come, 36. H. 8. 278. and 1. E. 6. in *Cancellar.*

The King granteth lands which are in Lease for terme of yeares of one which was attained, or of an Abbie, the graunt is good without the recital of the Lease of him which was attained of the Abbie, for recital of the Leases needed not, but





but of Leases which are of Record, *Brook Patents* 93.38.H.8.

If two men doe let land rendring to them rent, and if that rent is behinde and unpaid by two months, and lawfully demanded by the Leasors, that they may reenter if one of the Leasors dyeth and the other which surviveth demandeth the rent and it is not paid, the Leasor which surviveth may reenter.

A Lease by two men, reentry by the Surrender.

And if a Lease is made unto two men, and that if the rent is behinde and unpaid and demanded of them two, if one of them dye, and the Leasour demandeth the rent of the other which surviveth, he will not pay the rent, this demand is good, and the Leasour may reenter.

Rent demanded, and a Reentry upon a surviving Lessee.

And if a man enfeoffe two men upon Condition that they shall enfeoffe me, &c. before *Michaelmasse* next, and the one of them dyeth, if the other alone make the feoffement it is good, *Brooke titulo Ioyntenants*, 62. 41.E.3.18.

Estate unto two men on Condition and one dieth.

Note that if I let lands for life or for yeares, or if I doe give lands in Tayle, rendring rent to mee with Condition, that for default of payment I may reenter, if my tenant for yeares or for life, or the tenant in tayle doe let part of this land to me, or if I being the Leasor or Donor doe enter into any part or parcell of this land, I shall never after reenter for the rent behinde, for the Condition is suspended for all, and a Condition cannot be apportioned nor divided, *Brooke titulo de Extinguishment* 49. in *Conditions* 193. *Perkins* 163.

A man possessed of a Lease for terme of forty yeares, granteth so many yeares of the same to me which shall bee behinde at the time of his death, this grant is void because of the uncertainty, *per Hales Justice*, because it doth not appeare how many yeares will bee behinde at the time of his death, for the Grauntor may live all the 40. yeares, and then nothing shall be behinde at the time of his death, but such a devise by Testament is good, but if a man letteth land for terme of life, and foure yeares after his death, this lease is certaine, and his Executors shall have the foure yeares over after his death.

Lease for forty
yeares after the
death of the
Leasor.

Executors sell
land.

And if a man letteth land *Habund'* &c. from his death for 40. yeares after, this is good, for it is certaine, *Brook in Grants*, 154.

A man demiseth by his Testament that his land shall be sold by his Executor, and dyeth, and the heire doth enter, and after he is disseised, yet the Executors may sell the land, and the purchaser of the same may enter, and if the heire doth suffer a Recovery, or levy a fine, yet the Executors may sell the land, and by the opinion of some, that if a man doth disseise the heire and dyeth seised, and the heire of the disseisor doth enter, for he hath no right nor action is given to him, therefore hee hath no remedy, but a title of entry by the same, therefore he may enter, otherwise he is without remedy, *per Hales Justice*, *Brooke in Demise*, 36. & 47.

Tenant by suf-
ferance.

Note *pro lege*, that there is no Tenant to sufferance, but he which doth first enter by authority and

and lawfully, as if a man letteth lands for yeares, or for terme of another mans life, and the terme is expired, and yet he holdeth over his terme after the death of the tenant for life.

And tenant at will is where land is letten to another to hold at will, for he which entreth into land of his own head is Disseisor, *Brook in Tenant per Copy*, 15.

Tenant at wil.

A Lease is made to *Freeman* for 21. years upon Condition, that if the Landlord or sell or graunt his Reversion, that then *Freeman* his Tenant shall have the feesimple, the Landlord doth levie a fine of all the same lands to *Saunders*, *Saunders* the Conusee bringeth his *Quid Iuris clamat* against *Freeman* the Tenant for yeares to have him to at-tourne Tenant to him, but *Freeman* claimeth the feesimple, by which claime he lost his lease, for the Condition was repugnant, and Judgement was given, that the lease and terme of yeares was forfeited, and that *Saunders* the Conusee may enter, *Mich. 4. Eli. Plessingtons Case*.

Condition that the Leasor alien the Reversion, the Lessee to have the land in fee.

Tenant in Taile maketh a lease of, &c. for years rendring rent 20.s. yearly, after he releaseth 19.s. of the same rent and dyeth, the heire in taile accepteth rent 12.d. Question did rise whether the heire in Taile might distrain for 19.s. remayning, *Saunders* and *Dyer* Justices by their opinions he could not, but *Widdow* Justice contrary, and that he might distraine for the 19.s. but all the Justices agreed, that after such lease made by the Tenant in Taile, if he graunt that the tenant by Deed shal after hold the same land without impeachment

A Lease by tenant in taile, who releaseth part of the rent.

A Graunt without impeachment of Waste by Tenant in Taile.

of Waste, that this graunt was utterly void.

A Lease at wil.

A Lease from yeare to yeare at the will of the Leasor, if the Leasor enter, the Leasor cannot put him out the first yeare, 14. H. 8.

A Lease determinable upon a thing uncertaine.

A Lease may be determined upon a thing uncertaine, as a lease made to the husband and the wife during their Coverture.

A Lease so long as a tree groweth.

A Lease made for yeares so long as I. G. liveth, so long as such a tree groweth, so long as *Pauls Steeple* or such a house standeth, is good; a lease made for dayes is good, *per Brook Justice*.

Rent apportioned in Waste.

If the Tenant committeth Waste, and the Landlord recovereth against him in a Writ of Waste, the Rent shall be apportioned, *Mich. 14. H. 8.*

Acceptance of a new lease. Surrender of the first.

If Tenant for years during his Lease accepteth a new lease of his Landlord, this acceptance of the latter lease is a surrender of the first lease, *per Bradenell & Brook Justices, Mich. 4. H. 8.*

A Lease excepting Courts and perquisites in a Mannor is void, except it be in the King.

King *Henry* the eight demised a Mannor to *Io. Ormes* excepting Courts and perquisites, after the King granteth the Reversion of the Mannor to *Dudley* with Courts and perquisites, *Dudley* maketh another lease of the same Mannor to *Capell* to begin after the expiration of the first lease made to *Io. Ormes* excepting Courts and perquisites, the opinion of the Iustices was that the exception of the Courts and perquisites were good in the Kings lease made to *Ormes*, but the exception of the same in the lease of *Dudley* made to *Capell* is void, and *Dudley* to whom the King did grant the Reversion, may admit Tenants and graunt Copies,

pies and take the commodities of Courts, so long as the lease made to *Ormes* by the King doth continue, and when the second lease doth begin which was made to *Capell*, *Dudley* the Landlord cannot grant Copies, nor take any profits of the Courts, although he made exception in his lease of the same, for the exception of Courts and perquisites in the lease made to *Capell* is void, and *Capell* the Farmor shall possess and enjoy the profits of the Courts during his lease, nevertheless the exception of the same by his Landlord, *Pas. 12. Eliz.*

Ejectione firme brought and declared that the Defendant did take and carry all his goods and Chattels there found *vi & armis*, and declareth of a lease of a Mannor made to him of 40. years, to begin at *Michaelmasse* next after the death of *Iohn Fitzheron*, and averreth that *Fitzheron* died and he entred; the Defendant pleaded *non eiecit*, the Iury found *quod eiecit*, that the Defendant did put him out of his lease, and judgement was given for the Plaintife that he should recover his terme aforesaid, the Defendant bringeth his writ of Error to reverse this, in the which many exceptions were taken.

The first exception was, because the time was not set downe in the Declaration certainly when he entred immediatly when the lease was made, for if he entred before *Michaelmasse* after the death of *Iohn Fitzheron* he was a Disseisor and not a Termor.

The second exception was that he entred as

Ejectione firme.

A recovery of a terme by ejectionment.

A writ of error to reverse the same.

Rents and services excepted or reserved in the Lease of a Mannor is void.

the Writ mentioneth into the Mannor of Dunmow, and into one Mesuage, &c. and the Declaration was that hee entred into a Mannor to him demised, the Advowson of the Church and all the Rents of Assise belonging to the said Mannor excepted and reserved, so that the whole Mannor was not demised (as the Writ supposeth;) *Bromley* Justice saith that the exception and reservation of the Lease in the rents and services was void, because they are the substance of the Mannor.

The third exception was that the premises of the Indenture or Deed comprehendeth all the names in the Writ, but the *habendum* is to have and to hold the Mannor without naming the Mesuage, whereby it appeareth that the Plaintife is but Tenant at will of the Mesuage; *Bromley* Justice said that the Mesuage and all the rest before may passe and be known by the name of the Mannor, *Mich. Maria.*

Tenant for life is Remainder in fee, Tenant for life demiseth the lands for 15. yeares and dyeth, he in the Remainder doth enter, the Farmer bringeth the action of Covenant against the Executors of the Farmor upon the Demise adjudged that the action of the Covenant is not against the Executors although the Lease is by Deed indented, except it had beene broken in the life of the Testator, otherwise it were of a Covenant expressed, *Bromley* Justice opinion, that if the heire eject the Tenant for yeares of his father, action of Covenant is against the son upon the Demise by reason of the privity, and his opinion that the Assignee of

Privy.

of the Tenant for yeares may have action of Co- Assignee.
venant against the Leasor upon a Demise, although
the word of Assignee be not expressed in the lease,
but a *quære* of that.

Leasour doth Covenant and graunt unto the Tenant for yeares that he shall have the land to him demised unto him and his wife, and if she died unto the next wife during the life of the Leasor without Livery and seisin, this graunt and Covenant is no Surrender nor Confirmation of Surrender.
the Lease for the terme of yeares by the opinion of three Justices, but onely a meere Covenant, but *Weston* Justice contrary by reason of this word Graunt, *Sacfords Case*, Pas. 10. *Elix. R.*

In a Corporation by the name of Deane and Chapter of the Cathedrall Church of the holy and individuate Trinitat Carliell, made a lease of yeares by the name of Deane of the Church Cathedrall of holy Trinity in Carliell, & *totum capitulum de Ecclesia pred'*, six Justices of opinion against three, that this lease was a good lease, nevertheless the variance which is but the substance of the name, but 35. H. 6. *Proore* pleaderth the name of the Church of holy S. Peter where the foundation was *Peter and Paul*, adjudged naught, *Mich. 11. Elix. R.*

Lease is made unto *Corbis* for yeares, after he taketh a second lease adjudged to be a surrender of the first lease, although it be not in *esse* at the time of the taking or surrender.

If tenant for yeares be expressed with force, he in Reversion cannot have an action upon the Stat. Expelled in the force.

of H.8.6. for although he be disseised, yet he is not expelled, *Plas. 4. Maria R.*

Lease for yeares by the Bishop of York of divers lands in Battilsley, rendring rent at Battilsley, *Proviso* in the mean time of Vacation the rent shall be paid unto the Chapter as his right, the rent behind unpaid *sede vacante*, the Bayliffe of the successor of the Bishop reentreth and advoweth damage feasant.

Condition impossible.

First, holden of the Justice that the Proviso was no condition but a foreprise being not annexed to the things; also if it be a Condition it is a Condition impossible, for the Rent cannot be paid to the Chapter because they have no Reversion, and the Chapter can receive no Rent for that it is a body politicke and unperfect, opinion that the rent shall not be paid at Yorke nor in the Bishops house at Battilsley, but upon the land, and that upon demand, a doubt of the estate doth not cease because in the time of vacation the Condition was broken (if it be a Condition) so that neither the predecessor, neither the successor may avoid the same by reentry because the Condition is not broken in the time of the one, nor of the other, and upon payment of rent which was not due to any of them (but opinion cleere) that it were not if it were a freehold, opinion that the Bayliffe cannot reenter for his Master without speciall commandement, and although it be not expresse who shall pay the rent, the Defendant doth not shew the Distresse damage feasant to be done after the Reentry, therefore naught, *Plas. 5. Eliz. R.*

Reentry.

Lease

Lease of a Mannor in which there is a wood of 30. acres, and other places and plots of ground in the Mannor whereon Timber trees doe grow; and in the Lease the Leasour doth except and reserve Timber trees, and great Woods, three Justices opinion that the Lease for yeares should have the herbage and underwoods, and so seemeth the intent of the Leasor by these words, great woods, but *Mountague* Justice contrary, *Hil. 7. E. 6.*

Timber excepted.

Johnson maketh a Lease for yeares rendring rent, after maketh another Lease of the same land to begin during and before the expiration of the first Lease, *Mountague* his opinion was a good graunt of a Lease in Reversion, and that the Landlord should have the rent being but Chattell graunted in Reversion without Attournement, *Baldwin* and *Shelley* of the contrary opinion, *Hil. 28. H. 8. Brabridge Case.*

Lease in Reversion requires Attournment.

Lease of a Meadow, the Tenant covenanteth to repaire the banks, and the banks are drowned & overthrown with sudden floods, opinion of the Justices that the tenant for yeares is bound to repaire because of his Covenant, but he shall have convenient time to repaire them because it came by the Act of God, per *Fitzherbert & Shelley* Justice.

Reparations.

Lease of lands upon Condition that the Lessee shall not put over his terme of yeares unto *Anderson*, the Tenant for yeares putteth over his terme of yeares to *Bug*, adjudged that the Condition was not broken, for a Condition that goeth to defeate an estate shall be taken strictly, *Mich. 13. H. 8.*

Lease on Condition.

Lease

Executors.

p. 1203.

Lease for yeares upon Condition that the Lessee shall not put over or assigne his terme of years during his life without the assent of the Landlord, the Tenant deviseth by his will his terme of yeares unto *Taylor* without the assent of his Landlord, &c. and dyeth, opinion of the Justice, that the Lease is forfeited, for he unto whom the lease is demised is in possession of the same; but if the Tenant for yeares had made his Executors and had not given his Lease by his last Will and testament, the Executors may enter and possesse the lease, and no forfeiture, because the Executors hath the Lease by assignement of the Law, *Mich. 13. H. 8.*

Distressor.

Lease made by *Traps* a Distressor for yeares rendring rent, the Disseisee reentreth, the Tenant of *Traps* continueth his possession and payeth his rent unto *Traps* the Disseisor, nevertheless this he is by the continuance of the possession Disseisor, for he cannot limit his owne wrong, adjudged *per. Cur.*

Reparations,
trees felled,
waste.

Tenant for years doth Covenant at his proper costs and charges to reparaire, &c. and after felleth trees upon the land, the Landlord bringeth his action, the tenant pleaded that the house was ruinous by tempest, &c. and that hee repaired the same, &c. the Landlord replied upon the Covenant, the Court doubted thereof whether hee might or not, *12. H. 8. fo. 1. 21. H. 6. fo. 56.*

Ruinous.

Rent reserved
in a Lease not
to be recove-
red.

A Lease made for 80. yeares, the Lessee maketh a Lease of the same for 40. yeares rendring rent, the Tenant for 40. yeares maketh a Lease
for

for 15. yeares, rendring rent, after the tenant for 40. yeares granteth all his Interest of his Lease unto the Lessee for 80. yeares his Landlord, the tenant for 15. yeares will not attourne nor pay any rent, the Justices doubted how it should be recovered, *Broughions Case.*

Tenant for yeares surrendered his terme to his Landlord, yet he continueth the possession still, opinion of the Court was that this was no disseisin to the Landlord, but that hee neverthelesse might enter when he would, *Trin. 38. H. 8.*

Surrender of a Termor if the Tenant is in possession.

King Henry the eight made a Lease of a Rectory or Parsonage to *Taverner* with words to discharge him of Pensions, and of all summes of money concerning the same, and a Decree in the Court of Augmentation was that the King should finde the Curate to serve; and it was agreed *per Cur.* that if a common person should make a lease of his Parsonage with such words of discharge, he must finde a Curate because it is a spirituall administration which cannot be demised, and the service is annexed to the Parson, and doth not issue or come from the Parsonage, *Trin. 36. H. 8.*

A Lease is made of land and of Sheepe, the Sheepe dye and part of the land is drowned with the Sea, the opinion of some was that the whole rent should be paid for the residue of the land which remained, but other Justices were of a contrary minde, because it did come by the ordinance of God, but if part of the land should be evicted by Law against the Tenant, then the rent should be apportioned, and if the Sheepe doe live and the

the land is recovered by Action; yet the Tenant for yeares shall possesse the Sheepe by his Lease, and the Rent shall be apportioned, *Trin. 35. H. 8.*

A Lease for 30. yeares, and foure yeares after the Landlord maketh a new lease of the same land by these words, *Noverint Vniuersi per presentes me I. B. & c. dictis trigintis Annis finitis dedisse concessisse R. G. habend' à die confectionis present' termino pred. finito usque ad finem triginta & unius annor.*

Be it knowne unto all men by these presents, that I I. B. & c. the foresaid 30. yeares ended have given and granted to R. G. & c. the same lands, & c. to have and to hold, & c. from the day of the making of these presents the terme of 30. yeares aforesaid being ended, untill the end of 31. yeares, and these words *à die confectionis present'*, that is, from the day of the date of these presents, were stricken out in the line of the Indenture by the tenant for yeares, but yet the words remained legible, the opinion of the Court was that the second lease did begin at the expiration of the first lease of the 30. yeares, and shall not be intended to consume in the first terme, because the words in the lease shall be construed most strongly against the Leasor or Landlord.

But the defacing of the Indenture being the Act of the Tenant himselfe, was adjudged clearly by the Iustice to make the Indenture void although the defacing is not in a place materiall, *Pas 9. Eliz.*

Tenant for life
an occupant.

A lease is made to *Atkinson* to have and to hold

hold to his Executors and Assignes during the life of *Bennish*; *Atkinson* maketh a lease of the same land for 15. yeares to *Cranewise* rendring rent to him, his Executors and Assignes, and dyeth, a question and doubt did rise amongst the Justices whether *Cranewise* the Tenant of *Atkinson* for 15. yeares should be occupant of the land without paying any rent, or whether the rent is extinct, or whether the freehold should revert unto the first Leasor, or whether the terme of yeares shall bee in *esse*, but the opinion of all the Justices was cleerely extinct.

Rent reserved
extinct.

Tenant for life granteth by fine all his estate to *A.* and to his heires, *A.* dyeth and his heire is impleaded by a *Precipe*, and prayed aide and could not have it, because he was but as an occupant, *Mich. 15. Eliz.*

An occupant.

Tenant for terme deviseth his terme to his Executor who entreth and dyeth before the probate of the same, yet this his entry was ruled by the Court to be a good Execution of a Legacy, and that his Administrator shall have it, *Hil. 22. Eliz.*

A Devise of a
terme to an
Executor he
entrest before
the probate.

Note that where the Leasor hath nothing in the land when hee maketh a Lease, the Lease is void, as King *Edward* granted to the Bishop of *Coventry* and to his Successors the Advowson of a Church, and after the death of the present Incumbent he should have it to the proper use of him and his Successors, the Bishop demised the same by Indenture for yeares and the Lease to begin after the death of the Incumbent which was confirmed by the Deane and Chapter, and after

after the Incumbent dyed this lease is void and cannot take effect by estoppel, because it appeareth by the Indenture that the Leasor had nothing to doe with it at the time of the Lease made *per Cur. 7. Eliz. Dyer 244.* yet holden *Trin. 27. H. 8. fol. 13.* that the Landlord or Leasor may distraine and avow for his rent upon such a Lease, for the Tenant is estopped to say the contrary.

Joint Tenants
demise land.

Two joynt Tenants are for terme of life and one of them letteth and demiseth his part for terme of years rendring rent and dyeth, the terme shall continue against the Survivor but the rent is gone, *Mich. 3. Eliz. Dyer 187.*

Action of Covenant for
terme of years
not good against the
Executors of the
Tenant for life
upon a Lease.

Tenant for life maketh a lease for 15. yeares and dyeth, and he in the remainder in fee entreth, the tenant for yeares bringeth his action against the Executors of the tenant for life upon the lease, but *per Cur.* an action of Covenant was not good against the Executors of the Tenant for life, although the Lease is made by Deed indented except the Covenant were broken in the life of the Testator being a Covenant expressed, but where the heire doth put out the tenant for yeares of his Father, an action of Covenant is lyable against him upon his Fathers Lease, because of the privity in Law which is betweene the Father and the son, *per Browne Justice.*

Action of Covenant against
the heire.

Assignee of
the tenant for
yeares his action of
Covenant.

And his opinion was that the Assignee of the tenant for yeares shall have an action of Covenant against the Leasor upon the Lease without any word of Assignee mentioned in the Lease, but the rest of the Iustices did doubt thereof,
Mich.

Mich. 9. Eliz. see the Statute of 32. H. 8. c. 34.

Tenant for life maketh a Lease for yeares reserving Rent, and after he surrendreth his land which hee did hold for life to him in Reversion, who being in possession, by vertue and force of his ancient Reversion cannot have the rent newly reserved.

Tenant for life demiseth land reserving rent.

If Tenant for yeares doe deface the lease made unto him, the lease is void although it is not defaced in a place materiall in the Indenture, *Pas. 9. Eliz.*

A lease defaced by tenant for yeares.

Action of debt for rent upon a Lease for years, the Plaintife must shew that he requested his rent upon the land, but the Defendant may say that he was alwaies readie upon the land to pay his rent, and the Plaintife must shew that he did come into the land and requested his rent, otherwise the request is nothing worth, *per Cur. P. 21. E. 4. fa. 6.*

Requested upon the land.

Land is letten unto two men, and the one of them doth put his seale unto the Lease, and the other doth not, but agreeth to the Lease and taketh the profits with the other, he shall be charged to pay the same Rent, *Hil. 38. E. 6. fa. 8. 45. Ed. 3. fol. 3.*

Lease to two men, the one sealeth and the other doth not.

Lease made by Tenant in taile for 21. yeares rendring rent according to the Statute, although the tenant for yeares dyeth, yet this Lease is good against the issue in taile; but if the issue in taile dye without issue, the Donor may avoid this lease by his entry, *per Statute, 32. H. 8. cap. 24.*

Lease by tenant in taile.

But if tenant in Taile is over, &c. and demiseth lands for yearly rent and without issue, hee in the

Acceptance of Rent.

the Remainder doth accept the rent, this acceptance of the rent is no barre to him in the Remainder nor doth binde him, for the taile being determined, the Lease is determined and void, 1. *Ed. 6. in titulo de acceptance, 19 Brooke.*

Lease to begin
after a Lease
ended.

A Lease for yeares is made, to have and to hold to the Lessee after a Lease ended which was made to B. of the same, &c. where in truth B. had never any lease, this lease taketh effect presently, 3. *E. 6.*

A Lease from
60. yeares to
sixty.

A Lease is made for 60. yeares, and so from 60. yeares to 60. yeares untill 200. yeares be ended, this is all one very Lease and good, 29. *H. 8. in Leases fo. 49. Plowden 237.*

A Lease but
a Chattell.

A Lease for 30. yeares is good, and it is but a Chattell although it continue a long time, 32. *lib. Assis. in Assis. 6.*

A Lease for
dayes.

A Lease for a 1000. dayes is good.

A Lease from
yeare. to yeare.

A Lease made for a yeare, and so from yeare to yeare as long as it shall please both parties, if the Lessee doth enter in any yeare, it is a good lease for that yeare, 14. *H. 8. fo. 1.*

A Lease is
Affets.

I have a Lease for yeares as an Executor to another man, and after I doe purchase the Reversion, the Lease is extinct and ended, and yet the Lease remaineth as Affets, that is goods to pay the debts of the Testator, 4. *E. 6. Extinguishment 24. Brooke.*

Lease void for
incertainty.

A Lease is made of a meere incertainty, and the Tenant for yeares dyeth before the Lease is reduced to some certainty, it can take no effect nor ever be vested in the Executors or Administrators

strators of the Tenant for yeares, *per Cur.*

As where a man is possessed of a lease for 60. yeares, and granteth to me so many yeares of the same as shall be behinde at the time of his death, this is a void lease because of the incertainty thereof, *per Cur. 7. E. 6.*

If a lease is made to me for so many yeares as the Executors of my Landlord shall name, this lease is void because it is uncertaine, but otherwise it is by will, *Plowden. Com. 273.*

Lease void for incertainty.

Land is demised to me for yeares by Deed indented during my life, *Proviso* that if I doe dye within 60. yeares, that then my Executors should have so many yeares of the 60. yeares which should be behinde in the said lease at the time of my death, this is no lease but a Covenant because of the incertainty, 3. & 4. *Philip & Marie, Dyer 150. Cranmers Case.*

Lease incertaine.

Land is demised to me for 40. yeares after the death of *I. G.* so that if *I. G.* dye within ten yeares next ensuing, if *I. G.* doe survive and overlive the lease for 40. yeares can never take effect, *per Pop- ham Lord Chiefe Justice of England.*

And if I am possessed of a lease for 80. yeares and in consideration of a marriage to be had betweene my son and the daughter of *I. G.* I doe demise my land which I hold which I have by lease to my son for 70. yeares *habendum, &c.* after my death, this is a good lease; and the difference betweene this Case and the Case before is, because I demised the land with these words, To have and to hold the land, &c., after my death for

Lease by *habendum* good and apparent certainty.

Lease upon
Condition.

70. yeares, in which was an apparent certainty, and no apparent incertainty after in the Demisee, *per Cur. Mich. 34, & 35. Eliz. ab Eoficrofts Case.*

A lease is made to *Elizabeth G.* To have and to hold from the 20. day of *March*, untill the full end and terme of 80. yeares then next following, if the said *Elizabeth* lived so many, and if she dyed within the said terme of 80. yeares, or did alien the premisses, that then her estate should cease, and the Landlord by the same Indenture did give, grant and demise all and singular the premisses for so many yeares as were then to come and unexpired next remaining after the death of the aforesaid *Elizabeth* or her alienation unto *J. G.* for and during the residue of 80. yeares, if the said *J. G.* lived so long without alienation of the aforesaid terme, and if he chanced to dye or alien the premisses within the terme aforesaid, that then his estate should cease, adjudged *per Cur.* that the lease and terme was expressly determined and void by the death of *Elizabeth* by this limitation, (that is) if she lived so long, *Mich. 32, & 33. Eliz. Rotulo 1832.*

Rent reserved
and a lease
suspended.

Note that if the Leasor or any other by his commandement or direction doth enter or take away any part of the land that he hath demised and let to farme to his tenant for yeares, he hath herewith suspended his whole right and lost the same during his lease or untill such time as the tenant for yeares hath reentered into the same parcell so withholden, before which time the Landlord hath no right to have any rent, and if the Tenant
for

for yeares doe reenter into the same, then the rent doth revive but onely from the time of such reentrie made by the Tenant for yeares holden for cleere law, *per Foster Sargeant at Law.*

Reentrie of the Tenant doth revive the rent.

And if I make a lease for yeares reserving rent, and after an Obligation is made to me for paying the rent, if I after enter into one acre of this land, I have lost the penalty of this Obligation, because the penalty depended upon an intire thing parcell of which is divided discharged by him selfe, *Pasch. 4. H. 7. fo. 6.*

Leasor enter into parcell of the land demised by him.

Tenant for yeares, or tenant for life or lives, their Executors or Administrators, &c. shall have the like Action, advantage and remedie against him, his heires, Executors and Assignes unto whom the Leasor or Grantor hath granted the Reversion of such lands demised, as they might have had against the Leasors or Grantors themselves, *per Statut. 32. H. 8. cap. 34.*

Leasor granteth his reversion.

Joynt Tenants and Tenants in Common which hold land for life or for yeares, shall be compelled by a writ of *partitioe facienda* to be pursued out of the Chancery to make partition of those lands which they so hold joyntly or in common; so joynt tenant and tenants in Common may doe of inheritance, *per Stat. 31. H. cap. 1. & 32. H. 8. & cap. 32.*

Joynt Tenants and Tenants in common may make partition.

A lease is made to me for 80. yeares if I lived so long, and after by Deed indented the leasor demiseth the same to another for 60. yeares, if I dye the second tenant shall have the land for the residue of the yeares, *Chedingtons Case, 15. Eliz. Plowden 434.*

A Lease made to begin at the end of the first Lease.

Landlord doth
put out his te-
nant and sel-
leth the land.

A lease is made to me of land rendring rent, and my Landlord doth put me out and maketh a Feoffment of the land to another in fee, after I enter againe into the land, occupie the same, the Feoffee may distraine my Cattell for the Rent, *per Cur.*

But hee cannot bring his action of Debt against me for this rent, but distraine, *per Parson Justice*, and if the Lord distresse the Tenant and infeofeth a Stranger, the Seigniori is extinct, the Feoffee shall have the Reversion, *Trin. 6. H. 6.*

fo. 16.

Uses by Statute.

Terrell for and in consideration of 400. l. paid to him by *Gent* by Deed indented and inrolled, did bargain, sell, give and grant unto the same *Gent* and his heires, lands, &c. to have and to hold to the use of *Terrell* during his life, the Remainder to *Gent* in Taile, the Remainder to the right heires of *Gent*, the bargainory, this limitation of estate in the *Habend.* To have and to hold, is void and impertinent, for it is use raised out of use, *Dyer per Cur. 155.*

But if a future or contingent use doe chance to come to be in *esse*, then the Feoffees if the possession be not disturbed by Disseisin or any other meanes, shall have a sufficient state and seisin to serve the future use when it commeth to bee in *esse*, to be executed by force of the *Statute* of 27.

H. 8.

H. 8. And that seisin and execution must concur at one time. *Hil. 24. & 26. Eliz.*

But the contingent and future use is clean extinct if there is an alteration of the land, or if any estate of the same before the contingent or future use chance to be in esse. *per Cur.*

Uses by force of the Statute of 27. H. 8. are executed presently, and present possession of the same is given unto *Cestui qui use*; and uses in contingency, or future, are good by the *Stat.* if they fall in due time without the alteration of the estate if they come and be agreeable to the rules of the common Law, *per Popham, Lord Chiefe Justice.*

But uses newly invented and not agreeable to the common Law, are extirped, and utterly extinguished by the same Act of *Popham Justice*

And if a feoffment is made to me in fee, to the use of *A.* for life, and after to the use of any person that shall be his heir, or to any such heir for term of life only: If this limitation should be good, the inheritance shall be in no body. But this limitation was void, for limitation to use to have a perpetuall freehold is against the Law, and are all estates by Livery and Seisin, *per Popham Chiefe Justice.*

Christopher Corbet seised of a Mannor, &c. had issue *Rowland* and *Arthur* and *Elizabeth*, upon good consideration by Deed indented, did covenant with *I.* and others that they and their heires should stand seised of the said Mannor, and unto the use of the said *Christopher* for life, and after his decease, to the use of the said *Rowland*, and of the

heirs males of his body lawfully begotten, and for default of such issue to the use of *Arthur*, and his heirs males of his body lawfully begotten, with other such uses, &c. and at last for default of such issue, unto the use of the right heirs of the said *Christopher*; Provided, and it is covenanted by the said Indentures between the parties, That if *Rowland*, &c. or any of his heirs males of his body, &c. shall be resolved and determined, or attempt and procure any act or thing concerning any alienation of the said Mannor, whereby any estate taile limited before should be undone, barred or determined, by which means the Mannor shall not remain intailed as it is limited in the Indenture; That then he or they after and before any such attempt shall cease; and such person so attempting shall lose his estate, as if he were naturally dead; and that immediately the uses of the said Mannor shall go to him to whom the uses next doth or shall come by the intent of the said Indentures.

Christopher the Father dieth, *Rowland Corbet* his eldest son entred into the Mannor, and suffereth a common recovery unto his use, &c. And *Arthur* his brother entred into the land, and *Rowland* reentreth upon him, against whom *Arthur* bringeth his Action of Trespasse: It was adjudged by the Justice in the *Common Pleas*, that this Proviso to cease an estate limited unto a man, and to his heirs males of his body, &c. as if the Tenant in taile were dead, was repugnant, impossible, and against Law; for the death of the Tenant

nant in taile doth not cease the estate taile ; but the dying of the Tenant in taile without issue of his body begotten, is a determination of it, for when land is permitted to a man , and to his heirs males of his body lawfully begotten, with a Proviso annexed to that in the same conveyance, That if he do such an act, that then his estate should cease, as if he were naturally dead : This is repugnant at the beginning by expresse limitation, because he hath an estate of inheritance, which by possibility may endure for ever, and continue.

And if I make a gift of land in taile, upon condition that if I die, that his estate shall cease, and that I may re-enter ; this condition is void.

If a man maketh a lease upon condition that if the Leasor do grant the reversion, the lessee shall have the Fee-simple ; If the Leasor do grant the reversion by fine, the lessee shall not have the fee because the condition is repugnant and void. *Plesingtons Case. 6. Rich. 2.*

Land is given unto two by Deed, to have and to hold unto them, & *heredibus*, this is voyd for the incertainty and impossibility ; and although there is a clause of warranty to them and to their heirs, this maketh not the first words in the Deed which were incertain, and insensible, to be of any force and effect in Law, although his intent appeareth ; but his intent must be declared by words certain, and consonant to the Law.

Land is given to *Mary* and to *Jone* her sister, and to the heirs of their bodies lawfully begotten,

whereby they had a joynt estate for life, and severall inheritances; the Donor not intending that any of them should break their joynt estate, but that the survivor of them should have all the lands, *per jus accrescendi*, had the close in the Deed (*sub hac forma*) that the sister of them which lived longest should have the Land wholly and alone.

But because his intent is contrary to Law, it is voyd, for if the joynt estate is severed by fine levied, the survivor shall not have that part severed, by reason of that conditionall clause which he hath inserted by his own conceit and imagination, being repugnant to Law and reason, 8. *Assis.* 40. 33.

So here the intent of *Christopher Corbet*, that the estate taile should cease, as though the Tenant in taile were dead, if he made any discontinuance, &c. The which intent was repugnant to Law, and against all sense and reason, *per omnes Iusticiarios.*

And if a man by feoffement, or by his last Will and Testament, or by any estate limited by use, doth give land to *A.* and to the heirs males of his body lawfully begotten, and for default of such issue to *B.* and to the heirs males of his body lawfully begotten, and for default of such issue to *C.* and to the heirs of his body: He cannot with any Proviso determine any estate in taile which was in one person, and dispose the same to any other person by the same conveyance, Provided that if *A.* the eldest son attempt to sue a fine and recovery,

or

or any of them do or shall make any such act, which tendeth to the discontinuance or overthrow of this estate in taile, that then this estate as if he were naturally dead should cease, and that the land should descend to him in the next remainder; The Proviso at the beginning of the conveyance, and at the delivery of the same was repugnant, impossible, and against Law, for by expresse limitation he hath an estate of inheritance, which by possibility may continue for ever, *per Cur. in Chudleyes Case. Hil. 13. Eliz. Hil. 37. Elizabeth inter Germene, & Arescote, Rotul. 1750. upon the Will of Carie Littleton, 163. in Richels Case, & per 21. H. 7. fol. 11.*

Use cannot be raised by any Covenant, Proviso, or any other bargain or sale, upon a generall Consideration; As if I by Deed indented and inrolled according to the Statute (for divers good considerations me moving) do bargain and sell my land to you and your heirs: This bargain and sale is not good, for no use can be created upon such a generall consideration, for it doth not appear in Court that the Bargainer or feller, which is, I my self had *quid pro quo* for my land sold; And the Court ought to judge whether the consideration be good or not, which cannot be, because it is such a generality. *per Wrey, Chiefe Iustice of England, & Anderson Chiefe Iustice of Common Place.*

But the Bargainee, which is the man to whom I did sell the land, in this case may averre that money, or some other valuable consideration was paid

paid or given to me for the same, which being true maketh the bargain good, for if I by Deed doe Covenant with you, &c. That I and my heires shall stand seised, &c. unto the use of you and your heirs; No use without speciall averment can or shall be raised by this generall Consideration.

But if you be of my blood, and the truth that the Covenant which I made to you was in consideration of this, averment may bee taken, although it is not expressed in the Deed, *Dier 146.*

And although in a Deed, a particular consideration is mentioned, yet an averment in the same case may be taken of another consideration which standeth with the Indenture, and which is not contrary to the same, although it is not contained in the same; and these considerations by averment are traversable, *Pas. 3. & 4. Phil. & Mar. 146. per Cur.*

And where the consideration is generall, and the Covenant or bargain made with a man is certain, and the averment being true, may be taken as aforesaid: And when the consideration is generall, and the person uncertain, no averment can avail. As if upon divers good considerations I do covenant with you, that I shall stand seised of lands, &c. unto the use of such a man as you shall name. Now if you name my son or cousin, no use shall be raised hereby, for the generality and uncertainty, this was voyd *ab initio*, and can never be made good after by averment, for the intent of the

the Covenanter was as generall as the words were.

But if I covenant with you, that in consideration of fatherly love, or for the advantage or advancement of my blood, that I shall stand seised of Land to the use of my sons, or to the use of such of my cousins whom you shal name, upon the nomination the use shall be raised, for the consideration is intire and particular, and the person by matter of *ex post facto*, may be certain.

Uses being once raised by a Covenant in Considerations of fatherly love, &c. unto his sons or daughters, or for the advancement of any of his blood; and after there is in the same Indenture a Proviso added, that the Covenanter for divers good considerations may take leases for years; The Covenanter in this case cannot make leases for years unto his son or daughter, or to any of his blood, nor yet to any stranger, because the power to make the leases is voyd when the Indenture is sealed and delivered.

For the Covenant upon such a generall consideration cannot raise use for the causes aforesaid, and no particular averment will help herein, because his intent is as generall as his consideration; and his intent was not at the time of the delivery of his Deed to demise unto any person certain, but to demise at his pleasure generally. Therefore his power to make leases is voyd; the uses being before created and raised by Covenant, by a consideration as aforesaid: Therefore it was resolved *per Cur.* to be voyd. But note that if these
uses

uses had been limited by a recovery, fine, or deed of feoffment, then a consideration need not to be expressed to raise any use.

Note that there must be seisin in the feoffees, and there must be a man which is *Cestui qui use in rerum natura*, and the estate of the feoffees must be transferred unto him, which is *Cestui qui use, per le Stat. of 27. H. 8.*

And the said Statute of 27. H. 8. doth not transferre any possession to any use but onely to the uses in *esse*, and not to the uses in contingency, or future, untill they come to be in *esse*, for there must be a person in *esse*; that is a man in being which must presently take the use, and be seised unto the use according to the Statute. And likewise there must be use in *esse*, which must rise out of the estate of the land, and there must be a person in *esse* that must take the use before that any possession be transferred and executed unto the use, for if the person which shall take the use be not in *esse*, or if this person which should take the use be in *esse*, and there is no use in *esse* but onely in possibility, there cannot be any execution or possession of use, *per Anderson, Dier & Manhood Justice. Hilar. Anno 24 & 26. Eliz.*

And if the estate be utterly ought and gone from the feoffees, and is fully settled and vested in him or them which hath present use, then a future use can never rise, for it is impossible that it should be raised from the possession of *Cestui qui use*, that is, of him that hath the possession, for use cannot be raised out of use, *Dier 155.*

For

For if a man enfeoffe me of land, &c. in fee unto the use of *A.* and his heirs, Provided that if *B.* do pay unto *A.* 100. l. that then *A.* and his heirs shall stand and be seised to the use of *B.* and his heirs: This is clearly voyd, for the future use ought to be raised out of the estate of the feoffee, and not out of the estate of *Cestui qui use, per Curiam.*

Lingen made a feoffement to the use of himselfe, and after by his will deviseth, that his feoffees shall stand seised to the use of his daughter *Anne*, which in truth was a Bastard; Adjudged to be a good device for land, by reason of the intent of the Devisor; for the feoffees cannot by any possibility be seised to their own use: And if a man willeth that his feoffees shall give his land in taile, that is a good devise of Land, *Pasch. 15. Eliz. Dier 323.*

A fine is levied unto *A.* to the use of *B.* for life, the Remainder to *C.* in taile, the remainder to *B.* in fee, Proviso, &c. That he shall have the land in taile, and fee expectant upon payment of a 100. l. the use is transferred, *Trinit. 14. Eliz. Dier 314.*

A man which is *Cestui qui use* in taile, the remainder in taile, since the Statute of 27. H. 8. The Tenant in taile being in possession levieth a fine, &c. and dieth without issue; A stranger in the name of the feoffees, or the survivor of them, without naming any, entreth within the five years to receive the use in the remainder. A doubt if it is good. *Trin. 14. Eliz. Dier 312.*

A Father in consideration of a marriage of his youngest son, promised to friends of his sons wife by word, That after his decease and the decease of his wife, that his son should have the land in fee, nothing is altered by this naked promise, Adjudged, 396.

Tenant in *Capite* maketh feoffment of his Land to the use of the feoffee and his heirs untill such time as the feoffor did pay to the feoffed a 100. l. or his heirs : The feoffee dieth his heire being within age, the 100. l. is paid to the heir by the feoffor ; and an office is found, and by a *Monstrance de droit* ; The Kings hands were removed, and the mean issues after the payment of the 100. l. by the King lost.

It was holden *per Cur.* that although the heire being in ward, it shall be devested from the King, and that the King shall not have the value of his marriage, upon the tender of the marriage to him, for all mean contingents are removed which happen in the mean time : And the like Law is upon conditions performed, *Hilar. 13. Eliz. Dier 298, 299.*

A *Formedon* in Remainder was brought upon a Remainder in use limited upon and since the Statute of 27. H. 8. The Deed of the Remainder need not to be shewn for two causes ; First, for that in this case a Remainder may be created without Deed : The second cause is because the Deed appertaineth to the feoffees, and not to him, which is *Cestui qui use, per Iusticiarios, Trin. 10. Eliz. Dier 277.*

Tenant

Tenant was bound to *A.* to the use of a Widow, which he indented to marry, and he delivered the bond to the Widow, saying (this will serve) she delivereth the Bond to *A.* and after *T.* she doth marry Tenant, who dieth, which was adjudged to be a good delivery of a Bond, and sufficient in an action of Debt brought against his Executors, *Dier* 192.

Lease is made to *A.* for life, to the use of *B.* for life, if *A.* dieth; the estate of *B.* is determined, *Mich. 3. Eliz. Dier* 186.

A recovery of land is to my use, and after I enfeoffe the Recoverer; holden by the Justices that the Recoverer nevertheless shall be in by the Recovery, and still seised to my use. *Trim. 28. H. 8.*

If a man deviseth by his will, that his feoffees shall make an estate to me, the use is changed before the state is executed, *Mich. Mar. Dier* 96.

Semer, Lord Admirall, covenanted with *B.* that in consideration that the said *B.* had conveyed to him certain lands after his death, to levy a fine to the use of himself for life, the remainder unto *B.* in taile, holden *per Cur.* that the use was not changed before the fine was levied, for then the Covenant would not be performed: Note that Indentures which declare uses, if they are made foure yeares after the Recovery, they are good, *per Cur. Hilar. 4. Mar. Dier* 137. *Bassets Case.*

A husband maketh a feoffement to the use of him.

himself and his wife of land, &c. for life remainder, &c. The husband doth sow the land with corn and dieth, the wife shall have the crop of corn, and not the Executors of the husband, for the wife was Joynt tenant with her husband, but otherwise the Law is, if the remainder had been limited to the wife. And if the husband doth sow corn upon the land of his wife, and she die, her husband shall have the crop, and so shall the Tenant which holdeth the land during the life of another man have, if the Tenant for life dieth.

And if the husband soweth his land and dieth, and the third part of the land is assigned to her Dower, she shall have the corn on the ground, *Quia de optima possessione de Baron*; But in this point the Justices do vary. *Mich. 15. Dier. 316.*

Fines.

A fine levied by the Tenant in taile, the reversion in the King or recovery sued.

Fine levied by Tenant in taile, the reversion in the King, or if he suffer a Recovery, the King being in the reversion, a barre unto the issue, and yet no discontinuance, because the King in reversion, *Pl. 26. H. 8.*

A fine levied by the husband alone of his wives Land.

Fine levied of the husband alone with proclamation of Lands, which he holdeth in the right of his wife, and dieth, and the five years incurre without any action or entry made by the wife, she is barred by the Statute of 4. H. 7. and the Statute of 33. H. 8. will not help her, although the Statute do not limit peremptory time, for that doth

doth not speak of a fine with Proclamation, *Mich. 6. Ed. 6.*

Tenant in tail, the remainder in fee levieth a fine with Proclamation (he in the remainder dieth his son within age) Tenant in tail dieth without issue, so that the title doth accrue to the issue in remainder, and the five years incurred. And the Infant still remaining under age, neverthelesse the Statute of 4. H. 7. Action is saved unto the Infant untill he be of full age, and after he is of full age, he shall have liberty to claim or use action to recover the same; and he may use action within age if he will, agreed by all the Justices, *Mich. 4.*

Mar. Petits Case.

Sutton covenanteth with *B.* in consideration that *B.* hath conveyed divers lands unto him after his death, to levy a fine of certain lands unto the use of himself during life, the remainder unto *B.* in taile, the use is not changed before the fine is levied, for the covenant cannot be performed; *Mich. prima Mar.*

Puttenham by Indenture granteth land in fee farm with a condition of re-entry for non-payment of the rent, and covenanteth to make farther assurance; And by another Indenture bearing the same date doth covenant to levy a fine to the use, intent, effects, and condition of the first Indenture, and to no other use; He levieth a fine, *come ceo*, unto the Grauntée, yet adjudged, that the rent, nor the condition were extinct, nor gone, by reason of the fine levied, for the Indenture doth over-rule the fine, as well as if there had been

A fine levied by a Tenant in taile, no barre to a man which is in remainder, or to his heirs, his claime or entry made in five yeares. Infant.

A Covenant to levy a fine of lands in use for life, remainder in taile use.

Fine over-ruled by the Indenture that levied it.

an expresse Proviso to save the rent and the condition; The like Case following. *Hilar. 5. Marie.*

A fine of land rendering rent unto the Conuſor; The Conuſor after being vouched in Recovery of the ſame land, and made default, yet the rent reſerved by the fine adjudged good.

Elizabeth Bradbourne levieth a fine of land (rendering her rent) upon a farther aſſurance paid, there was a Writ of Entry in the Poſt brought *I. Biat* for the ſame land, who vouched *Elizabeth Bradbourne* who entred into a generall garrantie, and made default; And yet nevertheleſſe adjudged by the Court that her reſerved was good. *Hil. 5. Mar. Reg.*

Ceſtui qui uſe for term of life levieth a fine with Proclamation, in this Caſe any man need not to enter to make claim within the five years, becauſe nothing paſſeth by a graunt of his own eſtate, which is Law, and no forfeiture, for he hath nothing in the land; The like Law is of a fine levied by a Tenant for life in poſſeſſion. But *Brooke* doubted thereof if the fine were of land in fee.

If a fine be levied by a *Ceſtui qui uſe* in taile, this bindeth him and his heirs, but not him which is in reverſion, which is *Ceſtui qui uſe*: Note that at this day by the Statute of *32. H. 8. cap. 26.* and with Proclamations, *per ceſtui qui uſe* in taile, bar and bindeth the taile after the Proclamations. *Brook in tit. de Fines 107. in fine.*

Fine levied, or to be levied with Proclamations by Tenant in taile, in poſſeſſion, reverſion, remainder, or in uſe after Proclamations had, bindeth and barreth them and their heirs for ever.

But

But a fine with Proclamation may be confessed and avoided, and such a fine doth not binde him nor his goods, for the Statute doth intend of fines rightly levied, and therefore a man may say that the parties to the fine had no interest in the land at the time of the fine levied, &c. for if neither of the parties had nothing in the land at the time of the fine levied, then this fine of a conclusion between the parties; but all the strangers may avoid this by averment as before. *Brook in tit. de Fines levied.* 109.

A man bargaineth and sell et h Mannor with the advowson in fee, *habend.* to the use of the Bargainee and his heirs, in such manner as after in this Judgement it is covenanted; And they covenanted to suffer a recovery to the use of the Indenture, rendring rent to the Bargainor and to his heirs, with a clause of Distresse, with a *nomine pana* for non-paiement of rent.

And for the farther assurance it was concluded moreover, that the Bargainor and Bargainee should render a fine upon graunt of the land unto the Bargainee, with the rendring of rent unto the Bargainor, Proviso that the Bargainee shall re-grant the Advowson unto the Bargainor for term of his life.

And moreover doth covenant, that all estates after to be made, shall be to such uses; The recovery was sued and suffered, and a fine levied by varying from the Covenants: The Bargainee dieth before hee graunteth the Advowson.

Holden by the Justice that the *Proviso*, although it be placed among the covenants, it maketh a condition to defeat all the bargain and sale, and that the regrant of the Advowson shall be at the request of the Bargainor, in the life of the Bargainee.

And although the fine doth vary from the Covenants, yet by the general Covenant that all estates after to be made shall be to the same use; The condition is sufficiently performed and the rent to be paid. *Dier* 312.

Fine levied to *A.* to the use of *B.* for the terme of life, the remainder to *E.* in tail, the remainder to *B.* in fee, that if *B.* doth pay a 100. l. that he shall have the land in taile, and fee simple expectant, upon a payment the use is transferred. *Trin.* 14. *Eliz.* *Dier* 314.

Tenant for life of land, the remainder in taile, the Tenant for his life doth levy a fine of land (*cōme ceo*) unto himself in fee, which is a forfeiture of his estate: After Tenant for life, and he in the remainder joyned in feoffement in sale of the land by a letter of Attourney, and discontinued the tail: First an entry was given to him in the remainder by forfeiture; But now the feoffement of him in the remainder hath confirmed the lease for life. *Dier* 324.

A fine levied by Tenant in tail, according to the Statute of 4. *H. 7. c. 24.* and the Proclamations passe, and the five years do incurr after the Tenant in tail dieth, the question is whether the issue and heirs of the Tenant in tail are barred or not,

not, because of the privity which is betweene the Father and the son, for he is to make his conveyance and title from his Father, or if he shall be reputed privie because he claimeth *per formam doni*, and then his right should be levied by the second exception or saving mentioned in the said Statute, because hee is the first unto whom the right doth descend after the fine engrossed.

If no exception had beene in the Statute, all persons generally as well the issue in taile as all other should be barred.

In the first exception of the said Statute none is excepted but Feme Covert.

In the second exception is comprised that all other Strangers which is intended all Strangers to the said fine and not privy unto whom such title, right and interest which first shall accrew, remaine, descend or come to them after the fine ingrossed by reason of a gift in tayle or for any other cause, shall be to them saved if they make their claime or enter within five yeares after title to them accrewed, by which words all Strangers to the fine unto whom a Remainder in taile or a descent in taile first shall accrew after the ingrossing of the said fine shall be added as followeth.

If tenant in Taile discontinue his land and the Discontinuee levieth a fine, *per Proclamations*, and the five yeares passeth, and the Tenant in Taile shall be aided by the exception of the Statute, for the intents of the Makers of the Statute was not that hee which claimed by the same Tenant in Tayle being his Father which made the discon-

tinuance should be aided, &c. for such issue in taile is privy to the fine levied by his father from whom he must make his descent, and from whom he must make his conveyance.

But if he is no party to the fine nor privy, hee shall not be concluded by such a fine.

And therefore such issue in taile as is privy to the fine levied by his father is barred, *Pasch. 19. H. 8. fo.*

If my father disseise my Grandfather of lands which he held in fee, and after my father doth levie a fine of the same lands, my Grandfather dieth, and after my father dieth, the fine levied by Father doth bar me being his son, for I cannot convey the fee simple to my selfe but by my Father which am partie to the fine because I am heire to him and therefore privy, and so barred, *Pasch. 9. H. 8.*

But if the brother of my father doe disseise my father, and he being my Uncle doth levie a fine of the land with proclamations, and my Father dieth, and after my Uncle dieth within the five yeares, this fine levied by my Uncle of my Fathers land shall not barre mee, because I am a stranger to the fine, yet my title to the land is not as heire to him, but as heire to my Father, and therefore the fine levied by my Uncle doth not barre me, *Pasch. 19. H. 8. fo. 17.*

Agreed by all the Justices that he which is a stranger to a fine levied of lands unto whom a Remainder in taile or other title which shall first accrew or come shall suffer five yeares to incurre
with-

without claime after such fine levied, that this folly of the Ancestor shall be a barre to his for ever, *Paſ. 19. H. 8. fo. 7.*

Agreed by all the Justices likewise that if Tenant in Taile is of land, the Remainder in fee and the Tenant in Taile levieth a fine with proclamations of the same land, and he in the Remainder dieth the son being within age, and the Tenant in taile after dieth without issue so that the title of the land accrueth to the issue of him in the Remainder, and the five yeares do incurre the Infant of him in the Remainder still remaining under age, Action is saved, neverthelesse the Statute of 4. H. 7. to the Infant untill he is of full age, and after his full age the Infant shall have liberty to claime the land, or else Action to recover the same being within age if he will, *Mich. 4. Maria Petit his Case.*

Tenant for life is the Remainder in Taile, a stranger levieth a fine (*come ceo*) unto him in the Remainder in taile which by the same fine rendreth againe to the Conusor rendring rent unto the Conusor and dieth, and after proclamations doe passe, if the Tenant for life and issue in Taile accepteth the Rent, the fine and the acceptance of the rent affirmeth the lease and maketh it good in *Stapletons Case.*

And if Tenant in Tayle doe make a lease for yeares to begin after his decesse rendring rent, the acceptance of the rent in this Case doth not barre the issue, because the lease doth not take effect in the life of the father, *per Manhood Justice*, but

Catline Lord Chiefe Justice of England was of a contrary minde and said, that the acceptance of the rent affirmeth the lease, *Dyer* 279.

Note that Tenant in Tayle which levied a fine with proclamations shall binde him and his heires of his body begotten after proclamations made, and not otherwise, so that if the Tenant in Tayle dyeth before all the proclamations made, this fine will not barre the issue in taile, and the proclamations cannot bee made in shorter time then in foure termes, *Brooke his Abridgement in titulo de Fines levied*, 109.

But Tenant in Tayle which is not party to the Fine shall not so be barred after the proclamations made but that hee shall have five yeares to make his claime, and if he faile therein and dyeth his issue shall have other five yeares to make his claime by the equity of the Statute of *Westm. 2.* yet by the opinion of some, if the first issue doe neglect the five yeares whereby he is barred and dieth, his issue shall not have other five yeares, for if his issue is once barred by the fine, the state tayle is barred for ever.

And note that the issue in Tayle is barred by a fine levied by his father, for there is a privity betweene the father and the son, for the son cannot convey to himselfe as heire in taile, but as of his fathers body lawfully begotten, betweene whom there is a privity, and the *Statute 4. H. 6. 24.* saith that a fine doth barre parties.

Now at this day Recoveries against tenant in Taile, the Reversion or Remainder being in the King,

King, this is no bar to the issue in Taile, but that he may enter after the death of the Tenant in Taile, *Stat. 34. H. 8. cap. 21. 30. H. 8. 145. 33. H. 8. 224. 5. Ed. W. 6.*

Brooke in Discontinuance de possession, 32. & in titulo de Assurance, 6. & in Bar. 97. in fine, Rastal. in Recoveries 4.

And a fine with proclamations by Tenant in Taile the Reversion or Remainder being in the King doth not make any Discontinuance, nor is any bar by reason of the Reversion which is in the King, therefore the heire or issue in Taile may enter after the death of the tenant in Taile.

And the *Stat. 8. of 32. H. note 4. H. 7.* doth not binde the issue in Taile the Reversion being in the King, although the proclamations are made, and yet the *Statute of 4. H. 7.* saith that after proclamations made the fine maketh a finall end and concludeth as well privies as strangers, except Infants.

By the *Stat. 32. H. 8.* a fine with proclamations by him which is *Cestuy qui use* in Taile shall binde him and his heires after the proclamations made.

Tenant in Taile and a Stranger levieth a fine to me, and I by the same fine doe graunt and render to *I. A.* to have and to hold for 21. yeares rendring rent, and by the same fine graunt the Reversion and the Rent to the Tenant in Taile, which manner of fine is commonly used at this day.

In this Case although the graunt and the rendring of rent by the lease and the graunt of the Reversion are by one and the same onely fine at
one.

one instant time, and yet by Law the lease preceded and goeth before in the same fine, and the graunt of the Reversion followeth, *per Cur.* and likewise by the same Conveyance that uses be revoked, by the same Conveyance other uses may be limited and raised, for because the first uses doe cease by revoking (*ipso facto*) without claime or other Act, the Law doth judge a priority of the said Deed although it be sealed and delivered at one instant, *per Cur.*

And if the Leasor and his Tenant for yeares will acknowledge a fine of their lands and tene-ments to me, *Come ceo que sce*, and I render by the same fine againe the same lands unto the Tenant for yeares, To hold the same, &c. for 60. yeares rendring and paying to me 40.l. rent yearly with a clause of Distresse, and by the same fine I doe graunt to the Leasor or Landlord and to his heires, the Reversion of the same lands, &c. this is good and the best order to assure and make good a lease for yeares made by tenant in Taile, practised by *Baldwin* Chiefe Justice, and now used at this day, 36.H.8.285. *Brooke in Fines levied*, 118. *looke in Leases.*

Tenant for life is of land the Remainder in Taile and the Remainder to another in Taile, the Tenant for life and he in the first Remainder in taile doe joyne in a fine, *Sur conusance de droit come ceo sce*, unto another man in fee who rendring by the same fine 40.l. of the same land unto the Tenant for life, after he in the first Remainder dieth without issue, and he in the second Remainder entreth,

Tenant

Tenant for life distraineth for the rent of 40. l. by yeares, the other in the last Remainder sueth a Replegiare, and the Tenant for life advoweth, & his Advowrie adjudged good *per omnes Iusticiarios*, because the fine being levied by Tenant for life and him in the first Remainder in Taile was no Discontinuance to the first Remainder in Taile, nor yet to the second, because that the Tenant for life and hee in the first Remainder did give no more then lawfully they might give, that is, the Tenant for life did give his estate, and he in the Remainder did give a fee simple determinable upon his Remainder, and the second Remainder is not discontinued nor divested by this, and no forfeiture was adjudged by the estate of the tenant for life, because that he in the first remainder in Taile doth both joyne together in the fine, *ne Sur. Coke libro primo fo. 76. Gardiner & Bredows Case.*

And if the husband and the wife doe both levie a fine of the lands of the wife all the estate of the wife passeth, so that every gift is good which they may lawfully give, and it was adjudged in the Kings Bench, that if the husband doe charge the land of his wife, the charge is determined by his death although such a fine is levied after the charge and that it shall be the graunt of both of them of their severall estates, and therefore it was adjudged that the tenant for life the Advowant should have the retourne of the Cattell distrained for his rent of 40. l. and that this Advowant the Tenant for life had made no forfeiture by the fine

fine levied by him and he in the first remainder and that the rent of 40. l. should remaine to him after the death of the first tenant in taile without issue, *Mich. 39. Eliz. inter Gardiner & Bretton, per omnes Iusticiarios.*

Agreed by all the Justices of the benches, and all their Associates of every of their Courts with great deliberation and advisement, that no Rent, Lease, common Recognisance, Statute or any other Charge, interest or estate whatsoever made to him in the Remainder shall charge the possession of him which shall recover the said land against the Tenant in Taile which is in possession of the same land, and that a common recovery against Tenant in Taile shall binde not onely the Remainder, but all Leases, Charges, Graunts or Deeds whatsoever made by him in the reversion, and there is no difference betweene a reversion and a remainder expectant upon an estate Taile as unto this purpose, for if he in the remainder doth make a lease for a 100. yeares, and after Tenant in Taile in possession doth make a Lease for a 100. yeares, and these Leases doe incontinently begin together, and after the Tenant in Taile in possession maketh a Fcoffement or suffereth a common Recovery and dieth without issue, the Tenant for yeares of the Tenant in Taile in possession shall enjoy and possesse the land which he holdeth by his Lease for a 100. yeares against the Lease made by him in the remainder.

Although the Lease made by him in the remainder was first made for so long as the estate of the

the feoffee, or the estate of him that sueth the fine and recovery is derived under and from the estate of the Tenant in taile in possession to be in force, and remain in good effect, *per Cur. Pasc. 23. Eliz.* in *Capels Case*; the reasons follow: And as the leases of the Tenant in taile in possession shall be preferred, and not the leases made by him in the remainder: By the same reason all other estates whatsoever, which are derived from the Tenant in taile in possession: So long as the fine, recovery or feoffment are of force and remain in force, shall be preferred before any estate or interest derived out of the estate of him in the Remainder.

For if he in the remainder had acknowledged a Statute, or a Recognisance, and after the Tenant in taile suffereth a Recovery, and dieth without issue; the Land shall be subject to the Recognisance of the tenant in taile, and not to the Recognisance or Statute of him in the Remainder.

And the recovery doth not barre him in the remainder, and that the graunt of him in the remainder can never satisfie the recovery. *per Cur. Pasc. 22. Eliz.* in the Common Pleas, *Rotulo 1160. Capels Case.*

If lands are given to the husband and to the wife, and to the heirs of their bodies lawfully begotten, and the husband doth levy a fine with Proclamations, and hath issue and dieth: This fine by force of the Statute of 32. H. 8. c. 36. doth barre the issue in taile, that is of their two bodies lawfully.

lawfully begotten, but yet doth not binde the wife.

Tenant in taile hath issue two sons, and the eldest dieth in the life of his Father, his wife being with child with a son ; Tenant in taile the Father suffereth recovery unto the use of himselfe during his life without impeachment of waste ; And after his decease to the use of *A.* for twenty years, and after to the use of his heirs males of his body lawfully begotten, and of the heirs males of the bodies of such heirs males lawfully begotten. And presently after judgement, *Habere facias fescinam* is awarded, and before the execution of the same, that is to say, between five and sixe in the morning, in the very same day that the recovery was suffered, The Tenant in tail died, and his decease, and before the death of the son of the eldest, the recovery is executed, by force whereof *Richard* the second son of the Tenant in taile the Father, the Uncle of the son of his elder not born did enter ; And after the son of the elder brother was born, who entred upon his Uncle, and his entry was adjudged good, *per Cur. Trin. 23. Eliz.* for if Tenant in taile suffer a common recovery with a voucher over, and dieth before execution can be sued against him, yet execution may be sued against the issue in taile, because the right of the estate taile was bound by judgement against the Tenant in tail, and the judgement over to have recompence ; and this is favour of common recoveries, which are the common assurance in the land ; And so adjudged *per Cur.* that nevertheless

lesse the Tenant in tail, which acknowledged the recovery, died in the morning before execution was sued out, yet the recovery was good. *Shelleyes Case, Sur. Coke lib. primo, fo. 93.*

But if Tenant in taile be of a reversion expectant upon an estate for life, and suffereth a recovery, and hath judgement to recover over in value, yet his issue shall avoid the recovery, and he shall not be estopped, because he claimeth *Per formam doni*.

A recovery avoided by Tenant in taile after judgement, but not after execution.

Note that a reversion or any thing in graunt is more easily transferred from one party to another then an estate of free-hold in possession.

For if a fine or a recovery upon a recognisance of right only be levied of a reversion upon an estate for life, or for years, or for Seigniory, or of any other such thing which is in or may passe by graunt, there the reversion or thing which as graunt passeth incontinently by the recovery executed by the judgement of the Law without execution.

Things that do passe by graunt, are in the Recoverer, present, without execution.

So of all such things which are in graunts, as before is said, they passe unto the Conusee presently by the fine levied without any execution.

And likewise of things that are in graunt, as before is said, do presently passe by a common recovery unto the recoverer by Judgement, and the Demandant is thereof seised after the judgement presently without execution. *Past. 5. Ed. 3. fo. 26. 27. H. 8. fo. 7.*

Things in graunt do passe presently without execution by a fine and recovery.

And of such things which are in the graunt, as
Land

But lands in
possession the
recoverer must
have execution
*per habere fa-
cias seisinam*
by the Sheriffe.

A recovery of
land in fee
holden for life,
a barre to the
heire for ever.

The manner to
sue a recovery.

A recovery
with a double
voucher.

Land demised for years, for life, rent or common, the Recoverer is in possession of the same presently by the judgement without any execution.

But when the lands be in the possession of him which knowledgeth the recovery at the time of the judgement of the recovery or fine, there the Recoverors must sue execution.

But when the possession of the Lands is in the possession or occupation of Tenant for term of life, or for years, at the time of the fine and recovery sued, or any other such thing which is in graunt, in all such Cases the Recoverors shall enjoy the same without execution presently.

But if Tenant for life is the reversion in taile expectant, which Tenant in taile suffereth a recovery, and judgement is given to recover over-value, yet his issue may avoyd this judgement and recovery: But if the Recoveror after judgement hath execution, the issue in taile is barred for ever.

Tenant in taile must first make a feoffement of his Land intailed unto another, against whom a *Precipe quod reddat* must be brought, or else a writ of entry *in te post*; and he must vouch the Tenant in taile which made the feoffement to warranty, and the Tenant in taile must vouch over the common voucher.

This double voucher is the surest conveyance to barre the issue by reason of the recompence in value; and this is a barre against the issue in taile presently; and also a barre unto him and his heirs which

which hath the remainder over by reason of the recompence that the first tenant in taile had by his voucher. 4. & 27. H.8. 13. E.4. fol.1.

But a fine levied by tenant in taile with Proclamations, where there is a remainder over this fine, is a barre to the tenant in taile and to his heirs, because his heirs are lineally descended from him. But if the tenant in tail dieth without issue, this fine doth not barre him or them in the remainder because he is collaterall and not privy in blood unto the tenant in taile. So that he in the remainder make his claim or enter within five years after title him accrued.

A fine by Tenant in taile, a bar to his heirs.

But no bar to any in remainder, making claim within five yeares.

Therefore a recovery is better then a fine, for it is a present barre to the issue of the Tenant in taile, and to all them in the remainder, 30. H.8. 11. Recovery in value. 30.

A recovery better then a fine.

But a Recovery against Tenant in taile by a Writ of Entry in the post by a single voucher, is no bar to the heirs and issue of the Tenant in taile, and is but a discontinuance which may be recovered by the issue in taile by a writ called a *formedon in le descender*, because the single voucher in the recovery doth not give but such estate which the tenant in taile had in possession at the time of the recovery; This is a Bar if he be in possession of that estate taile not altered, and is as good as a Recovery with a double voucher if the estate bee not altered.

A recovery against Tenant in taile by a single voucher, is no bar to the issue in taile.

But a Recovery upon a voucher against Tenant in Taile is a Bar against him and his heirs by reason of the recompence in value, 32. H. 8. 32.

T

All

All Fines with their proclamations after are a sufficient Bar, &c. by the *Stat.* of 32. H. 8. But in some cases no barre; for holden for Law that if the issue in taile be remitted and seised by force of the taile before the Bar be impleaded, that is, before the Proclamations doe passe, the issue in taile is not bound nor barred thereby, and therefore in this case before execution sued, the issue in taile is still seised by force of the taile, and is in possession *per formam doni*, before the Barre be compleat, that is, before the Proclamations doe passe, and therefore execution cannot be sued against him, nor any Barre against him after the death of his Father, because the state taile descendeth unto him in possession. *Sm. Coke li. 3. in le Case del tims, the last Case.*

And if tenant in tail be disseised, and after doth levy a fine, and the Disseisor without warranty, and dieth, if the issue in taile do enter, and is seised by form of the tail, before all the Proclamations be passed and made, although the Proclamations be made after, yet this is no barre to the issue in taile.

Where a fine is levied, no barre nevertheless the Proclamations made contrary to the Stat. of 32. H. 8.

And likewise if tenant in taile doe levy a fine, and after disseiseth the Conusee, and dieth before all the Proclamations do passe and are made; And after the Proclamations in the time of the issue in taile passeth, and yet the issue in taile is not bound by this, by the Statute of 32. H. 8. And yet the words of the act are, that all fines after Proclamations, &c. shall be a barre.

Tenant in taile levieth a fine, if there be error in

in the Proclamations, the whole fine shall not be reversed, for it shall be a fine at the common Law neverthelesse, *Trin. 4. Eliz.*

Errors found in the Proclamation, yet the fine good.

A woman seised of land by descent from the Father, suffereth recovery unto her own use in fee simple. *Tempore 6. H. 8.*

And after by Indenture between her and *John Germyn* doth covenant and graunt that after marriage, which intended with *John Germyn*, that the recoverers shall stand and be seised to the use of her self, and the said *John Germyn*, and to their heirs: They were married and the feoffees did execute their estate accordingly.

And after the husband and the wife, by Indentures made between them, and the next heir of her Father, reciting in the same, that the land was the inheritance of her Father, and her inheritance by her Father, and she had no issue of her body, and that she was deceived in her first judgement, for she did intend alwayes, that for default of issue of her owne body, that the heires of the part of her Father should have the Land.

Whereupon the husband & the wife agreed and concluded to be seised of the same Lands, to the use of themselves in speciall tail; the remainder to the right heir of the wife.

And the husband did covenant, that if the wife did die without issue, that he would execute an estate to the use of himselfe during his life, the Remainder to the use of the next heire of the Wife.

The wife dieth, and the Statute of 27.H.8. was made after the husband dieth without executing any estate.

It is agreed *per Cur.* that the heire of the wife should have the Land, and not the heire of the husband.

For the correction of the limitation of the uses wherein the wife was deceived was lawfull, and the consideration in the last Indenture of the husband and the wife, and the wife was sufficient to raise the use of the whole Land unto the heire of the wife: And the land removed from the wife was for the advancement of her lineage, and that the Land should descend, *Concessum pro lege per omnes Iusticiarios.*

Carrell and his wife did knowledge a fine of his wives lands, she being of the age of 19. years in the time of vacation after *Hilary* term by a *Dedimus potestatem*, and the Writ of Covenant bearing date in *January*, was retourned *Crastino Purificationis* in *Hilary* Term, and the *Dedimus potestatem* did bear date three dayes after the Originall; And the Kings silver was entred in *Hilary* Term, four dayes before his wife died (that is to say) the *Friday* in *Easter* week.

But the fine was not ingrossed untill the *Wednesday* next following.

Whereupon the next heir to the wife in *Easter* term following, prayed and desired the Justices of the Bench, that the fine should not be delivered to the party, nor recorded; And yet neverthelesse it was; for all the unperfect, unfit, and undue practises.

persons generally as well issue in taile as all other should be barred.

The Statute of
4.H.7.cap.24.
concerning fines
expounded.

Entry within
five yeares the
fine ingrossed.

In the first exception of the Statute none is excepted but feme Covert.

In the second exception all strangers to the fine which have title to the land, &c. at the time of the fine levied are aided if they bring their Action or make their lawfull entry within five yeares after the fine ingrossed, and the issue in taile is not aided by any of these exceptions.

Strangers to
the fine.

Privies of blood
which be the
children of the
tenant in taile.

In the third exception is comprised that all other persons, &c. (which shall bee intended all strangers to the said fine and not privy) unto which such title, right and interest which first shall accrue, remaine, descend or come unto them after the fine ingrossed, by reason of a gift in Taile or for any other causes, shall be unto them saved if they make their claime or &c. within five yeares after title to them accrued, by which words all strangers to the fine unto which a remainder in Taile or a descent in Taile first shall accrue after the ingrossing of a Fine shall be aided.

Where the dis-
continuance of
the tenant in
Taile levieth a
fine the issue in
Taile shall be
ayded by the
Statute, by the
exception of
the Statute and
recover the
land, the dis-
continuance is he
unto whom
the tenant in
taile did sell
his land unto
for such issue

As if tenant in Taile discontinue and the Discontinuance levieth a fine with proclamation & the five yeares passe, after the tenant in Taile dieth, the issue of the tenant in Taile shall be aided by the exception of the Statute, for the intent of the makers of the Statute was not that he which claimed by the same Statute in Taile which was his Father which made the Continuance should be aided, &c.

For

For such issue in Taile is privy to the fine levied by his Father to whom hee must make his descent and from whom he must make his Conveyance.

But if he be not partie to the fine or privy, hee shall not be concluded by such fine, and therefore such issue in Taile which is privy unto the fine levied by his Father, is barred.

If my Father disseise my Grandfather of land which he hath in fee, and after my father levieth a fine of the same after my Grandfather dyeth, this fine levied by my Father is a bar to me, for I cannot convey his fee simple unto me but by my Father which was party unto the fine and as heire unto him, and so I privy and therefore barred.

A fine, a bar unto an heire privy in blood.

But if the brother of my Father disseise my Father and he being my Uncle levieth a fine with a proclamation, and my father dyeth, and after my Uncle dyeth within the five yeares, this fine levied by my Uncle shall not barre me because he is a stranger to the fine, and although that I am heire unto my Uncle which levieth the fine, yet my Title unto the land is not heire unto him, but as heire unto my Father, so shall not I be barred; *Looke the Statute, 32.H.8.*

But a fine levied by a stranger shall be no bar.

Concord and Arbitrement.

Concord executed in part and in some part not, is not good *per Husley* Chief Justice, *et per Cur.* and a Concord is not good to make such a thing or doe such a thing at a day to come, for it is not good except it be presently performed and done.

For if a man in an Action brought against him do plead a Concord that it was accorded the Defendant should give unto the Plaintiff, &c. such a day, &c. or after, &c. the which he hath done, this is no Concord except the thing is presently executed.

For if the Plaintiff do bring his action of trespassse or debt, &c. after the day, it was no plea for the Defendant to say that it was agreed between them that the Defendant should pay the Plaintiff 10. s. at another day which is not yet come, and demand Judgement, *si actio*, for this trespassse or debt cannot be determined by an accord between them, but by an immediate satisfaction.

But otherwise it is of an Arbitrement, for there the debt or trespassse is transposed *in rem judicatam* by the Judgement of the Arbitrators, for the which the Plaintiff may have his action of Debt, and therefore it is a good plea in Arbitrement to say they put themselves in Arbitrement which did award that the Defendant should give the Plaintiff 10. s. at a future day and not yet come and

and demand Judgement *Si actio*, but of a Concord the Law is otherwise, for there must bee present satisfaction, *per Cur. Mich. 6. H. 7. fo. 10. 11.*

In an action upon the Case, the Plaintife declareth that the Defendant for 20. l. the moytie or one halfe whereof the Defendant had received and the rest to bee paid at the Concord ended, assumed to deliver three hundred pounds of wax to the Plaintife such a day, &c. and at the day he delivered 124. pound of waxe corrupted and not good, warranting the same to be good and merchantable, whereby the plaintife was dammified, the Defendant pleaded that afterward an accord was made betweene them for 10. l. of wax more as well for the insufficiency as for the rest of the wax not paid, the which hee hath paid, and the plaintife hath made receipt thereof and demanded judgement of action and by a Demur in law it was adjudged a good bar, for Concord executed is a good plea in all Actions where damages are onely to be recovered.

And Arbitrement is a good plea before it is executed, for an action of Debt is upon an Arbitrement, and an action of Deceit is not good, for the warrantie of the sufficiency of the wax to bee good after the Contract made is void, but made at the time of the Concord it is good, *Mich. 6.*

Ed. 6. An Action of Trespasse was brought for goods taken away, the Defendant saith that the Plaintife did bring his goods into his house, and because the Plaintife did owe unto the Defendant 20. l.

Accord

Accord was made betweene them that the Defendant should retaine the goods untill hee was paid, wherefore hee did take the goods and the Plaintife had not yet paid the 20. l. adjudged a good plea, *per Cur.* without shewing the cause of the debt, 21. H. 7. fo. 13. 14.

If a man will plead a Concord betweene him and another, and that the Defendant should give the Plaintife 6. s. at a certaine day which was yet to come, adjudged cleere no Concord, *Mich. 6. H. 7. fo. 11.*

In an Action, &c. the Defendant said that he such a day, yeare and place did give unto the Plaintife a pottle of Wine in satisfaction of all trespasses, &c. the which he agreed to and demanded Judgement, *Si actio*, &c. it was a good plea although that hee doth not say the Accord was made for the pottle of wine, for the accord was presently executed, 19. H. 6. fo. 29.

Accord must be satisfied or recompensed presently or else it is nothing worth, and it must be executed, for an action of Debt is not upon an Accord as it is upon an Arbitrement, 16. E. 4. fo. 8. *per Cur.*

And *per Keble*, a man hath no remedy to come to the possession of his owne due unto him by a Concord only, 20. H. 7. fo. 29. *in Trespasse.*

A man demiseth land for yeares rendring 40. l. yearly rent with a clause of reentry for not payment of the rent, and after an Accord and agreement was betweene them by words, that the Tenant should board the Landlord at his table for the

the rent, and neverthelesse the Landlord demanded the rent and reentred, and the tenant reentred on him; the Landlord bringeth his Action of Trespasse, the Landlord pleaderh his reentry, and the tenant pleaded the Concord and agreement by word, adjudged a good replication for the Tenant, 47. E. 3. fo. 24.

Action of Debt against tenant for terme of yeares for 20. l. arrerages of rent, the defendant pleaded a Concord of 10. l. paid to the Plaintife for al debts and trespasses, and one day the Justices were of opinion that the plea was not good because the Concord was but matter *in faite*, and the defendant cannot wage his Law against a lease for yeares.

But *Keble*, *Vaviser* and *Fineux* did alter their opinions, for payment of rent in a forraine Shire is a good plea in this Case.

And the like Law in an action of Detinue of Charters and delivery of them in a forraine shire, and this is good without answering to the debt, but to plead such pleas that is an agreement or concord for the discharge of the arrerages of rent in the same Country is not good.

In Arbitrement if the Arbitrators doe award that the one partie shall be non suit against the other in his suite or discontinue his suite, or levie a fine, or to enfeoffe a stranger of land, or to pay a stranger 10. l. such awards are good, 5. H. 7. fo. 13.

If Arbitrement doe award that the one partie shall have the lands from the possession of the other, this Arbitrement doth not give the freehold of

of the land unto the other, and if he refuse to suffer him to have the land, the other hath no remedy except he have an Obligation for him to performe the Arbitrement, 21.E.3.*fo.26.*

Arbitrement is no plea in writ of Detinue of Charters, nor in a writ of Annuity, for these are mixed actions in the realty, otherwise it is of an action of Trespasse and such like actions, for they are all in damage, and in a writ of Detinue of Charters a man cannot wage his Law, nor proesse of outlawrie is not, *per 9.H.6.fo.90.*

Action of Debt was brought upon an Obligation, the Defendant saith that the Condition was that if he did stand to the award and Arbitrement of *A.* and *B.* of all quarrels and debts betweene the Plaintife and him, &c. and that they awarded that he should pay unto one *Kinwelment* 40. s. which hee hath paid, and demanded Judgement of Action.

And it was adjudged no plea *per Cur.* that nevertheless the award is void to pay unto *Kinwelment* 40. s. which was a stranger to avoid the Obligation.

And likewise it was adjudged *per Cur.* that although the award is void, yet he must performe it because of the bond, or otherwise the bond is broken and forfeited.

But action of Debt is not to be had against or upon the award, for that the award is void, wherefore the Plaintife did traverse the Award which was admirable for this no award betweene the Plaintife and the Defendant, 21.H.6.*fo.46.*

And

And note that in pleading of an Arbitrement, the party must shew the place where the submission was made, and the names of the Arbitrators.

9. H. 6. fol. 5.

Arbitrement was that where one of them had trespassed him, that of them shall be acquitted against the other, and other likewise against him; adjudged a good Arbitrement, *per Newton Justice*, 12. H. 6. fo. 13. 20. H. 6. fo. 18, 19.

Arbitrators awarded that the Defendant should pay a penny to the Plaintife for full satisfaction for all manner of actions, and that he had paid the penny; adjudged a good barre. 12. H. 6. fol. 39.

If two men submit themselves of all actions, reals and personals, who make award of actions personals onely; this award is good, although they doe not award of actions reals, *per Cur. 19. H. 6. fol. 6.*

Arbitrators do award that the one of them shall pay ten pounds unto the other, and that he and two other men shall be bound for the paiement thereof; the Defendant must plead the award *verbatim*; and that he hath paid the ten pounds, and was bound for the same, &c. adjudged good; for whereas the Arbitrators did award that two others being strangers should be bound with him for the paiement of ten pound; the awards in this respect was voyd, for he cannot compell them to be bound for him; but against himself the award is good.

And if they award that the party should be bound:

bound to pay ten pound by their advice; this award had been voyd, for they cannot give this award two times; but otherwise it is if they award that he shall be bound to pay ten pound by the counsell of the other: Note the diversity, *per Brian, Neale, & Chock Iustice. 18. Edw. 4. fol. 22, 23.*

A. and *S.* put themselves to arbitrement; the Arbitrators award that *A.* and his wife should levy a fine unto *S.* of certain land, &c. The Arbitrement adjudged voyd as concerning the wife, because she is out of the submission, *per Vavisor Iustice. 17. H. 8. fo. 43.*

The Plaintife saith that the Arbitrators made their award before *Michaelmas*, &c. And the parties did put their seals unto the award, and the Plaintife did put his seale to it, and requireth the Defendant to put his seale thereunto, who refused; whereupon action did accrew unto the Plaintife.

And note, that upon award the Plaintife must declare how he hath performed his part, and in what manner the Defendant hath broken his part, *Quod nota, 8. H. 6. fol. 18. per Cur. Tempore H. 8.*

In an action of trespasse the Defendant alledgeth an arbitrement that he should give unto the Plaintife a piece of broad cloath, the which he hath been alwayes ready to give him, and is yet, and offereth the same in Court, adjudged a good plea: And the Plaintife saith that he required the cloath, and the Defendant refused; and issue taken

ken that he did not refuse; and *per Cur.* the refusing of the award doth not extinct the action; But otherwise it is if the Defendant do perform the award, or if he be ready to perform it, *Quod nota.* 7.H.4. fol. 3.

Two women were bound in recognisance to submit themselves to the arbitrement of the right and interest of two hundred Acres of Land, called *Kerstorling*, and for all other actions and suits concerning the same; so that the Arbitrement, &c. were delivered up before a certaine day.

The Arbitrators did award, the Defendant should have the Brakes during his life in the Wast of the Village of *Kelstorne* rendring to the other every year, 2. s. adjudged that the award was voyd.

First, because the Arbitrators had disabled themselves of their authority being upon condition. *Ita quod*, So that, &c.

And for as much as they have made their award of one thing, where the submission was of two things, *Ergo*, voyd, but if the submission had been by parcell, that is by word, and not by writing, the award had been good, in part, *quod nota.* And they have awarded nothing of the property of the Land, whereof the submission was: But of the profits issuing out of lands, and also they have not named *Kelstoring*; and although the Arbitrators did intend the same, yet the averment of the parties cannot declare the intent of the Arbitrators. *Mieb. 8. Eliz. R. Dier 24. 2. & 123. Similes*

Sub-

Submission was by Obligation, *Ita quod*, so that the award be made or given to the parties, or to one of them, &c.

In an action of Debt upon an Obligation it may be delivered unto them by word, or to one of them alone, of the one party, *Dier 219. 5. Eli 7.*

In an action of Debt upon an Obligation, or for arrerages of account found before Auditors, accord is no plea, *per Cur.* But satisfaction by way of arbitrement, is a good plea. *Mich. 10. H. 7. fol. 4.*

If two Arbitrators are, and one of them with the consent of the other doe make the award, this is no arbitrement, because both of them did not make the accord.

And giving the arbitrement is the onely act of the one, and not the act of him which consenteth. *Trin. 7. H. 7. fol. 15.*

If two Arbitrators doe award that two others should make the award, that is to say *John* and *Henry*, who doe make the award, the arbitrement is voyd, 4. *Ed. 4.* but 47. *E. 3. fol. 20.* is contrary.

An arbitrement is no plea in an action of Trespasse: If the Defendant doth not say that the Arbitrators did award something more or lesse to the Plaintife. 43. *Ed. 3. fol. 28.*

The Condition of an Obligation is that if the Defendant did stand to the arbitrement of *A*, &c. which did arbitrate that he should pay unto the Plaintife, before the first day, &c. 10. li. the which 10. li. he did after unto the Plaintife before the

the day, and he refused it; the Defendant need not to say that he is yet ready to pay the ten pound.

And the like Law is if a man is bound to pay all the money which a stranger shall seise or ward to the Plaintife, *per Cur.* And the reason is, because it is to doe a collaterall thing, *Trin. 19. H. 8. fol. 12.*

But if the Condition of an Obligation had been to pay money which was due before, the Law is otherwise, for he must conclude that he is still ready to pay the money.

If Arbitrators have divers things to arbitrate, if their authority is Conditionall, that is, *Ita quod*, so that the same award be delivered to the parties in writing before, &c. if they do not arbitrate all, they have disabled themselves of their Authority, and their arbitrement is voyd; But if the submission is absolute, and without Condition of divers things, the award of one thing onely by them is good. *Dier 219.*

And note that five things are incident to every award, the Matters of the Controversie, Submission, the parties to the Submission, Arbitrators, and the Delivery of the award to the parties, *Dier 219. 4. Eli2.*

Action of Debt by a woman Executrix; The Defendant pleaded that *Iohn Bent* her husband in his life time, and this Defendant did put themselves of all manner of actions, &c. which he hath performed, &c.

This plea was adjudged good, *per Cur.* and by

this Arbitrement the debt due unto the wife is extinct, as an Executrix; But if the husband doth nothing in the time of his life, to extinct the property of the goods, which his wife hath as an Executrix to another, the goods and the action for the same remaineth to her: but if her husband doth give away the goods which she hath as an Executrix; the gift is good. *21.H.7.fo.29.*

Arbitrement and all other things which are but matters in *fact*, being pleaded, but it must be shewn in what place the Arbitrement, &c. was made and done.

But if a release is pleaded, the place where it was made, or where it was delivered, is not materiall, because it is a date of it self. *Pasc. 21.H.7.fol.23.*

Estates of Land.

Father and son, and the Father hath a brother which is Uncle unto the son, and the son purchaseth lands in fee-simple, and dieth without issue, his Father living; the Uncle shall have the Land, and not the Father, and yet the Father is nearer of blood to the son; But there is a maxime in Law, That inheritance may lineally descend, but not lineally ascend. Yet if the son doe die without issue, and the Uncle doth enter into the Land as heir to the son, (as the Law is) and after the Uncle dyeth without issue the Father then living; then the Father shall have the Land as heire unto the son because he commeth

to

to the Land by collaterall descent and not lineall ascension, *Littleton fol. 1.*

Land is given to the husband and to the wife, and to the heirs of their two bodies lawfully begotten, which is called a speciall taile, the remainder to the husband in taile; If the first wife dieth without issue; the husband is seised of the second taile in remainder, because the freehold which was in the husband after the death of the first wife was extinct and drowned by reason of his remainder. *50. Ed. 3. fo. 4.*

If I let Land to *A.* for terme of life, the remainder to *B.* for terme of life, the remainder to the right heirs of *A.* for ever; *A.* may graunt to *B.* to hold the Land without impeachment of Waste, although he had a freehold in possession for he may alien the fee simple, for if *B.* do die, *A.* is seised in fee, for the remainder doth rest in him, *per Cur. 24. Ed. 3. fol. 70.*

If I let land for life to *A.* the remainder to *B.* for life, if *B.* my Tenant in reversion for term of life disleiseth, my reversion is gone from me; But if *A.* my Tenant dieth, the estate of *B.* is changed, for he is now in by the remainder, and my reversion is reverted in me, *19. H. 6. fol. 22. per Fortescue Justice.*

Land is given to the husband and to the wife for term of their lives, and the longer liver of them; the remainder to the heirs of their bodies lawfully begotten; This is an estate taile presently executed by reason of the immediate remainder, *per omnes Iusticiarios, 35. H. 8.*

I let land for life, and after I confirm the estate of the Tenant for life; The remainder of the said land to another man in fee; This remainder is voyd, because the confirmation doth not enlarge nor change the estate precedent. *Doctor & Student, Cap. 20.*

Tenant for years holdeth over his term; an estate in fee is supposed to be in him, &c. And there were doubt whether he were possessed in fee or not; But the Law intendeth that he hath an estate in fee, although he is in possession by wrong; and a Disseisor he is not, for his Landlord cannot have an action of trespassse against him before hee hath re-entred. And likewise an Action of Trespassse is not to be brought against the Disseisor, before the Disseisee hath entred.

But the Landlord shall recover his possession of his Tenant of the Land which he holdeth over & more then his term by a Writ of entry; *Ad terminum qui preterit*, for a *Precipe quod reddas*, is not but against a Tenant of freehold, *per Hufsey 22. Ed. 4. fol. 84.*

Lands are given by these words, *Dedi & concessi Ecclesie de Dunmow*; This Land shall goe to the Parson and to his Successors. *11. H. 4. fol. 84.*

A Vicar hath a freehold in his Vicarage, as the Parson hath in his Parsonage. *Pasch. 12. Ed. 3. fol. 3.*

A man granteth to me, *proximam presentationem* of a Benefice, and to my heirs, or make a lease of

of land to me and to my heires, yet the Executors shall have it and not the heire, for the heire is not capable of Chattels, 34. H. 6. fo. 27.

Lands are given to the Maior and Commonalty of London, they have a fee simple without these words Heires, or any other words, 12. H. 7. fo. 12.

Land is given to me and to my heires females, and I have issue a son and a daughter and dye, my daughter shall have the land, for though she is not heire, yet she is heire female, and if the land is given to the heires males or females of a man, he hath a fee simple, *per Newton & Martin Justices, & per Cur. H. 6. fo. 23.*

An estate of land is made to the husband and wife for and during the life of the wife and the remainder thereof to the right heires of the husband, the husband hath an estate but for life during his wifes life, 8. E. 4. fo. 2.

A man seised of land in fee hath a daughter and his wife being with child of a son, the husband dyeth, and after the wife is ravished, and she consenteth to the ravishment, and the daughter doth enter as she may by the Statute as next of blood, and after a son is borne, this son cannot enter upon his sister and be heire and tenant to the Lord, *Plowden Commentaries fo. 56. & 5. Ed. 4. fo. 6.*

A Lease is made for terme of life, the Remainders to the right heires of me, if I have issue a daughter and dye, and my wife being with child of a son, my daughter shall have this land as a

purchase, and my son being after borne shall never devest this, and she shall not be in Ward nor pay reliefe, 5. H. 7. fo. 27.

And the like Case is, 5. Ed. 4. that a woman consented to a man that ravished her having a daughter, and the daughter doth enter by the Statute of King R. 2. and a son is borne, the son shall never devest this, for the land devesteth in the daughter by purchase, and therefore she shall pay no reliefe, 5. E. 4. fo. 6.

If I marry a woman being great with child with another man, and within three dayes after our marriage she is delivered, and I dye, the child is no Bastard, but heire unto me, and tenant to the Lord, 18. E. 4. fo. 30.

If I marry my Cousin, the children which I have begotten of her are not Bastards by the Common Law untill we are divorced, but my child shall inherit my land and have estate of the same by descent, 11. H. 4. fo. 46.

And if I marrie my Cousin and have issue by her, and after we are divorced in our lives, and our espousals avoided, our children then are Bastards, yet if I or my wife die before this divorce is, our children are all free and no Bastards but shall inherit and have an estate of our lands, 24. H. 8. *titulu Bastardi* 44. Brooke.

If I marry, and after my wife being alive I doe marry another woman, and have a son by my second wife, this son is a Bastard and shall have no estate of my land by descent although my first wife dieth after, 24. E. 3. fo. 11.

And

And if my wife doth run away with an Adulterer and hath issue, if I die the child is my heire, and not the Adulterers, for it cannot be tried by whom the woman was gotten with child, and the Law intendeth it was her husbands, *41. E. 3. fo. 11. 7. H. 4. fo. 9.*

Where that land is originally in the heire which never in his Ancestor was before, the same land doth vest in the heire as a Purchaser and not by descent, and therefore he shall pay no reliefe nor be in Ward.

And there is a Maxim and Rule in Law, that when the Ancestor of any man doth take any estate of freehold by any gift or conveyance, and in the same gift or conveyance an estate is limited immediately unto his heires in fee simple or in taile, that in all these Cases these words Heires are words of limitation of an estate and not words of purchase, and therefore the heire must pay reliefe and be in ward.

But otherwise it is where an estate of yeares is limited to any man, the remainder to the right heires of the tenant for yeares, in this Case the heires of the tenant for yeares are in as Purchasers and shall pay no reliefe.

So that the heire is not in possession by descent but by purchase, he shall not pay reliefe or be in ward, *Trin. 23. EH 7.*

But if a man by his last Will in writing demifeth lands to me in fee, yet the Lord shall have his reliefe and Heriots, and he may distraine for them by the Statute of *32. H. 8. cap. 1.*

A feoffment is made upon Condition that if the Feoffor or his heires shall pay 20.l. or doe any such Act, &c. before such a day, that then it shall be lawfull for him or them to reenter, if the Feoffee dyeth before the day of payment of the 20.l. &c. if a daughter to save the Inheritance doth pay the money, or doth satisfie the Condition, she shal have & possesse this land, and a son after born shal never avoid this nor shal enter upon his sister, for if she had not paid the money or satisfied the Condition the land had beene lost, 5. H. 7. fo. 25.

And hee shall pay no reliefe nor bee in Ward, because hee is possessed of the same as a purchaser, and not by descent, *per Coke* generall Attourney.

But if a feoffment is made upon Condition, that if the feoffee or his heires do pay 20.l. or do such an Act before such a day, which Condition is broken in the life of the Feoffor, in this Case the Law is otherwise, for here the heire entring for the condition broken shal be in Ward, pay releefe and have his age, because he is in by descent and not by purchase, *per Coke* Attor. gen. *Shellies* case, *Trin.* 23. El.

A man hath issue a son and daughter by one woman, and a son by another woman, and is seised of land in fee and dieth, his eldest son entred and dyeth without issue, the daughter shall have the land and not the youngest brother, *quia possessio facit Sororem esse heredem*; but if the eldest son doth not enter into the land after the death of his Father, but dyeth before any estate is made by him, then the youngest son shal inherit the land as heire to his Father.

Note.

Note therefore that the possession of the brother cannot make the sister to be heire but of lands that are in fee simple, and not of lands intailed, *Little-fo. 3. 3. libro. assis. 32. E. 3. titulo 8.*

Note that if two brethren begotten of severall women, and the eldest is seised of land in fee and dieth without issue, and his Uncle entred into the lands as next heire to the eldest son, which Uncle if he likewise dye without issue, then the younger brother shall have the land as heire unto his Uncle although he is but of halfe blood to his brother.

Note that it is a Maxime in Law that no man shall have land in fee simple by descent except he is heire of the whole blood: for if a man hath issue two sons by divers women, & the eldest son doth purchase land in fee simple and dieth without issue the youngest brother shall not have the land, but the Uncle of the eldest brother or some next cousin of his Father, because the youngest brother is but halfe blood to the elder brother.

If I purchase lands in fee and dye without issue, the next of blood of my father shall inherit the land before the heires of my Mother, but if there are no heires of my Father, then the land purchased by me shall descend to the next heire of my Mothers side, but if land descend to me by my Fathers side, and I dye without issue, the next heire of the blood of my Father or Grandfather shall inherit this land, and for default of such issue the land shall descend to them of the whole blood of the Father of the part of the Fathers Mother, and if there is no such issue, then the Lord shall have the land by escheate.

And

And if I marry a wife an Inheritrix of land in fee, and have issue a son, &c. and my son entred and dieth without issue, the heires of the Mothers side shall have this land, and not the heires of me the Father, and for want of heires of the Mothers side the Lord shall have the land by escheate.

And so note the diversity where the son purchaseth land in fee, and where he commeth to land by descent by the fathers or by the Mothers side, *Mich. 12. E. 4. fo. 14.*

The Bishop of Winchester made a feoffement to *Bullock* of a Mesuage and 17. acres of wood, and land in *Brewood* being a great wood containing a 1000. acres to be taken at the election of the Feoffee and his heires.

And before *Bullock* made his election he died, and fine descents after the heire would have made election, but it was adjudged against him for three Causes.

The first Cause was, the feoffement was pleaded without Deed, and an election cannot be annexed unto an estate without writing or Deed, nor Condition, Covenant, assent, licence or liberty.

The second Cause is, because this estate by feoffement passeth by livery and seisin and that maketh the thing certaine which passeth, for if there is incertainty it is void, for after livery there doth remaine no election to make the freehold to be in abeiance.

The third Cause is, because election must bee made in the life of the parties, for before election there is no property, and election cannot descend,

scend, *Mich. 11. Eliz. Dyer 281.*

Queene Marie having a Rent of 20. l. issuing of land of the which the husband and the wife were joynt-tenants, and the *Queene* doth give, graunt, remise, release and renounce the rent unto the husband and his heires, the husband deviseth this rent, this devise of rent is good, *per Dyer* Lord Chiefe Justice of the Common Pleas.

And the husband is in choice and in election to have the Deed of graunt to inure and vest in him as graunt or not, or by way of extinguishment, but if he faileth of his election it is a doubt whether his heire may be at choice or make his election after his Fathers death, but the better opinion of the Justices was, that the Patentee shall have his election to use his Patent as he shall thinke best, *Mich. 15. Eliz. Dyer 319. 9. H. 6.*

A man is seised of land holden in Knights service, and hath issue a son and a daughter by one woman and dyeth, his eldest son being under age, and the possession of the land is in the Gardian, if the heire dye being in ward, the possession of the lands which is in the Gardian is such a possession of the heire which maketh his sister to bee heire unto him and not the brother of the second wife being but of the halfe blood, *8. E. 3. titulo 12. & 8.*

A Lease is made for life to *A.* and to the use of *B.* for life, if *A.* dye the estate of *B.* is determined, *per Cur. Mich. 3. Eliz. Dyer 186.*

To joynt-tenants in fee make partition of lands, &c. by word out of the Shire where the land is,
the

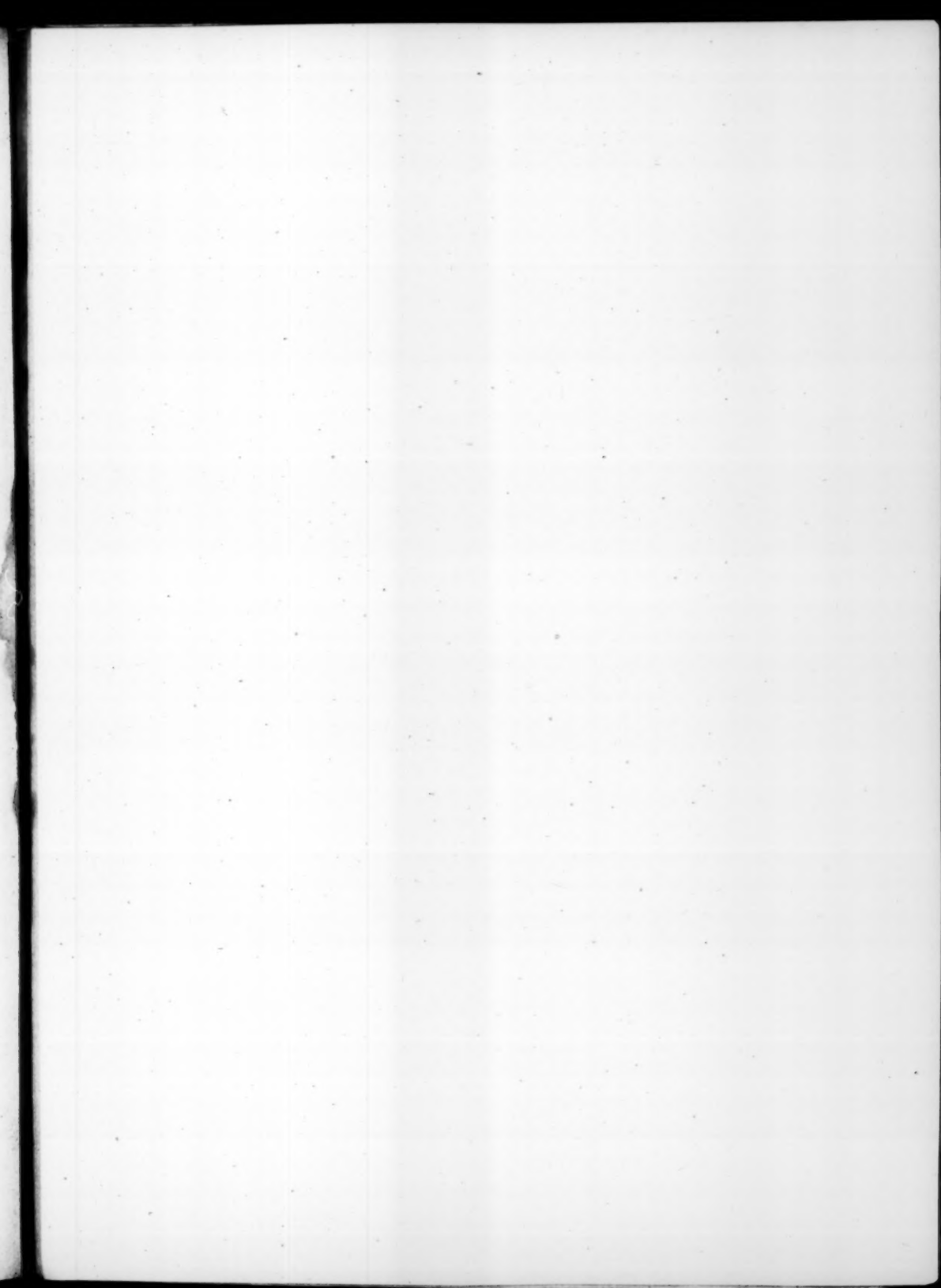
the Justices were in doubt whether this partition were good or not, for the *Statute* 31. & 32. of H. 8. is to compell them by writ of partition to make partition as partners, and so it is by tenants in common, which writ must bee pursued at the Common Law, *Pas. 2. E. 3. Dier 179. Statute 31. H. 8. cap. 1.*

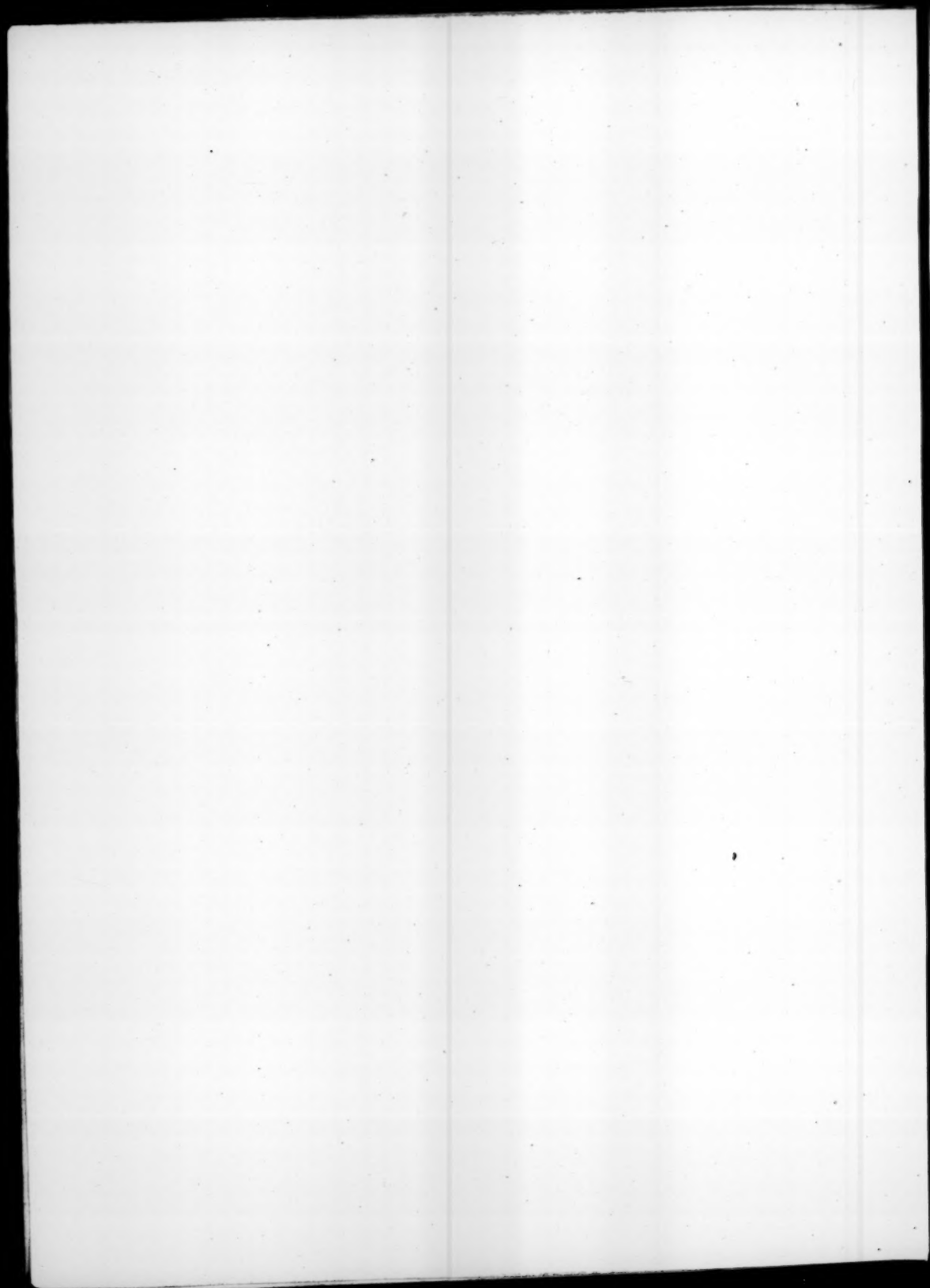
And joynt-tenants and tenants in Common which hold joyntly or in Common for terme of life or yeares or joynt Tenants or Tenants in Common, where one or some of them have an estate for terme of life or yeares with others which have an estate in fee in any Mannor, lands, &c. shall be compelled to make partition of such lands, &c. by a writ of partition, but this writ is to be pursued out of the Chancery, *Stat. 32. H. 8. cap. 32.*

I do purchase land with these words, To have and to hold to me for ever or to my Assignes for ever, I have an estate but for terme of my life because I lack these words, and to my heires, which words onely doe make an estate of Inheritance in all feoffements and Graunts, but if a man doe sell me his land and maketh no mention of my heires, this sale is good to me in fee simple in the land, *per Audley* Chancellor of England, and *Shelley* Justice, 27. H. 8. *fo. 5.*

Land is devised to me paying to my Executors 40. l. and dye, I have a present fee simple by reason of payment of this 40. l. although these words To my heires, are not mentioned in the Wil, for in this Case the intent of the Devisor must be observed.

Land





Land is sold to me for 100.li. not making mention of my heirs in the sale, yet I have a fee-simple in the same, *per Cur. Banco Regis. Mich. 4. Ed. 6.*

But if these words, Unto me and to my heirs, are left out in a feoffment, gift, or graunt of land, the Law is otherwise, *27. H. 8. fol. 5.*

A man by his last Will and Testament, willeth that I shall have his Land for ever, I have a fee-simple in this Land, although the words Heirs or Assigns are not expressed, *per Fineux & Littleton. 15. H. 7. fol. 37.*

Land is given to me and to my heirs. males, If I have issue male, I have a fee-simple, and I have a fee simple although I have no issue male.

In assise the Tenant pleaded a feoffment of Land made unto two men and their heirs, and that one of them did survive whose estate he had, and giveth colour to the Plaintife, &c. And the Deed was shewn, which was a gift of Land unto A. and B. and unto his heirs and assigns, leaving out this word, *Suis*; And in the clause of warranty in the same Deed, the same land was warranted with these words, *Sibi, heredibus & assignatis suis.*

It was adjudged, *per Cur.* That for the incertainty in the premisses of the Deed in the clause of the estate, because it doth not appear unto the heirs of which of them the Deed shal be referred, because this word (*suis*) is left out; and because the clause of warranty maketh no estate, nor limit any estate; the assise was awarded to be good for lacking of this word (*suis*.)

But

But if the estate or feoffment had been made to one man alone, & *haredibus*, and leaving out *Suis*, it had been otherwise, for it cannot be intended but to his heirs only.

But it is made unto two men, *haredibus & assignatis*, without this word (*Suis*) it is incertain whether it shall be intended to the heir of one of them, or of both; and that such an estate was but for terme of life to whom it was made, 19. H. 6. fol. 15.

A man maketh a lease to me for life upon condition, that if I doe not pay 20.li.&c. by such a day, that then I.S. shall have the Land; This future limitation is voyd, *per Walmsley Justice*.

A feoffment of Land is made to me and to my heirs, unto the use of A. and his heirs every *Munday*, and to the use of G. and his heires every *Tuesday*, and to the use of C. and his heirs every *Wednesday*; these limitations are voyd, for such fractions of estate are voyd in Law, *per Walmsley*.

If I have a term of years as an Executor, and after I surrender the same; As in one respect the term is extinct, but as to another respect the lease is affets, *per Walmsley Justice*.

He which entreth into Land for a condition broken, must have the thing, and the estate it self, which he had when he made the estate conditionall. *Corbets Case*.

A Lease is made upon Condition that the Tenant shall not assigne over his terme, during the terme, without the assent of the Leasor;
The

The Tenant devised it without assent, &c. and dieth, the lease is forfeited; But if the lease cometh into the hands of an Executor, by the assignment of Law it is otherwise. *Mich. 15. H.8.45.*

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F I N I S.
